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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

THE STATE OF CONNECTICUT,
Petitioner,

v.

NEIL J. THOMPSON, JAMES C. BLACK,
FRANK P. LEPORE, ROBERT E. PARKER, JR.,
Respondents.

On Writ of Certiorari to the Supreme Court of the State of Connecticut

---

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

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QUESTION PRESENTED

1. May a state court suppress all wire interceptions because the police officers overheard conversations to which others than the one person named in the interception order were parties, when the officers had applied for an order authorizing such interceptions and the application was approved without conditions by the panel of judges issuing the wiretap order?

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

The petitioner, the State of Connecticut, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Connecticut entered in this proceeding on September 6, 1983.

OPINIONS BELOW

The opinion of the Connecticut Supreme Court is reported at 191 Conn. 360, 464 A.2d 799 (1983), and appears in the appendix hereto. (Appendix A). The decision of the Connecticut Superior Court granting the motions to suppress appears in the appendix hereto. (Appendix B).

JURISDICTION

The decision of the Supreme Court of the State of Connecticut was entered on September 6, 1983. Motions to reargue were denied by the Connecticut Supreme Court on September 21, 1983. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS

Constitution of the United States, Amendment IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Constitution of the United States, Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the

privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

FACTS

On March 9, 1973, an application to intercept telephone conversations over two public telephones, one inside and one outside the Austin House Hotel in Terryville, Connecticut, was filed with the wiretap panel. The application recited that large quantities of brown "Mexican" heroin were being purchased by police undercover agents from one Albert, who was using both phones to contact his source of this drug, and sought to intercept his communications and those of others unknown over a period of ten days for twenty-four hours a day. (Defendant's Ex. 1A-2E). That application was approved on March 15, 1973 as wiretap order number 73-03. (Defendant's Ex. 1A-2E).

Before the issuance of the Austin House order, agents of the Regional Narcotic Squad had on successive occasions purchased for large sums of money wholesale quantities of brown heroin from Albert. One of these sales occurred in Plainville, Connecticut, on Dewey Street where Albert went to obtain the heroin. This type of heroin had not previously been found in the area and was known to have been processed in Mexico. Albert's activities indicated a steady supply of this narcotic drug. (Defendant's Ex. 1A-2E).

Albert himself indicated to the agents that he used the public telephones at the Austin House Hotel, where he then lived, to contact his source for the drug. Because of Albert's addiction and financial status it was apparent that his source, rather than Albert, had access to the drugs and the cash to carry on the

international trafficking. Albert had so stated to the agents. Joseph LeBlond was also associated with Albert in distributing heroin to agents and was associated with Albert in distributing heroin from Mexico, getting the heroin from the same unknown source. (Defendant's Ex. 1A-2E).

Thereafter from March 15 to March 22, when a further extension of the order was sought, the intercepting officers monitored both telephones for twenty-four hours a day. All calls were intercepted, recorded, and entered into a log. This log was attached to the application to extend the original order and did reflect the continuous monitoring to the 22nd of March. (Defendant's Ex. 1A-2E). The wiretap extension was granted on March 23, 1973. (Defendant's Ex. 2A).

While the interceptions were being made, the undercover agents purchased more heroin some of which was supplied to Albert for resale by one Allen LaFleur, who at the time was accompanied by Kathleen Paradis, his girl friend with whom he was living. (Defendant's Ex. 2E, p.2, para. 6). The agents also bought heroin which LaFleur sent to an agent while refusing to meet directly. The agents observed that both Albert and LaFleur were young, had no wealth, and from conversations were merely runners and not the suppliers themselves of the Mexican heroin. (Para. 8). (Defendant's Ex. 2A).

The wire interceptions also reflected that involved in the operation were Albert, LaFleur, "Ron," "Frank" and "the old man." (Defendant's Ex. 3A-3E).

In the meantime, the undercover agents, who were not on the disclosure

list because they were local police officers, had heard Kathleen Paradis direct an unknown male to call 747-5361 to reach Allen LaFleur from the Austin House since one of the agents wanted to buy heroin from LaFleur. That number was also heard dialed from the interior phone at the Austin House six times without answer by the wire intercepting officers that same day. (Defendant's Ex. 3A-3E).

Telephone number 747-5361 was found to be listed with the telephone company to Daniel A. Wrisley, aka Daniel A. Risley, at 17 Dewey Place, Plainville. (Defendant's Ex. 3A-3E).

During their previous contacts with LaFleur, the undercover agents had been given the telephone number 589-7770 for Kathleen Paradis. This telephone was located on Johnny Cake Mountain Road, Burlington, Connecticut, listed to Kathleen Paradis, but in a home rented by

a Daniel Wrisley. Wrisley was known to the State Police to visit Arizona twice a week by air and to have a record of narcotics arrests in Connecticut and Arizona. (Defendant's Ex. 3A, pp.23, 26). The Burlington telephone was removed on March 19, 1973, but toll records reflected previous collect calls from Arizona. (Defendant's Ex. 3A).

The undercover agents also learned in conversation with Albert that his source of heroin were two partners, "Danny" an addict and "Skippy" a non-addict, who regularly went to Arizona for heroin which they brought to Connecticut in large quantities. (Defendant's Ex. 3A).

The continued wire interceptions on the telephones at the Austin House also revealed that the telephone (589-7770) had been removed because of fear of a wiretap and that "Frank" had taken

"Allen" and "Danny" to the airport to get more dope. (Defendant's Ex. 3A).

On March 28, 1973, an application to intercept telephone communications over the telephone at Wrisley's address in Plainville was filed with the wiretap panel and sought to intercept his communications and others unknown over ten days for a period of twenty-four hours day. The application reflected that Wrisley's associates in narcotics trafficking were a "Skip" whose last name and address were unknown, "Frank," last name and address unknown, LaFleur and Albert, and that probable cause existed that they had sold and were selling narcotics and were using the telephone for that purpose. (Appendix D at 6d). The application also requested that the interceptions continue until the objective of the interception, the disclosure of Albert's, Wrisley's, and

LaFleur's source of heroin, was obtained. (Appendix D at 7d). The application was approved on March 28, 1973 as wiretap order number 73-04. (Defendant's Ex. 3A-3F). Thereafter, the wire interceptions were made of calls over the telephone at Wrisley's home. All calls over that facility were intercepted and recorded by the wire interception officers. Because the interceptions did not reveal the supplier of Wrisley and Parker, an application to extend the order was filed and granted on April 6, 1973. (Defendant's Ex. 4A-4D). Thereafter, the interceptions continued until April 14, 1973. (Defendant's Ex. 9).

While the Austin House wiretaps were in operation, Trooper Petrowski of the Connecticut State Police, overall coordinator between the State Police monitors and the Regional Narcotic Squad,

reviewed the maintained logs of all intercepted communications with an eye to the information developed by the undercover agents. In reviewing the intercepted logs for the inside pay phone at the Austin House, Petrowski found 52% or 81 of the 149 intercepted calls to be pertinent to the investigation. Of the remaining 68 non-pertinent calls, only 8 calls were over two minutes in duration. Petrowski was unable to detect a pattern of innocent communications within the non-pertinent calls intercepted over either Austin House phone since, in many cases, it was not possible to detect the callers' identities and, therefore, anticipate their conversations, and, in other cases, the conversation did not last long enough to be deemed innocent before it concluded. (Defendant's Ex. 2A; T-1053-67).

The other monitoring officers who were asked were also unable to detect such a pattern of innocent conversations within the calls they overheard. (T-511, 515-16, 747, 755, 903-04, 1314, 1317, 1514, 1554, 1562-63, 1590, 1614-15, 1631, 1651, 1689).

A twenty-four hour wiretap, Order 73-04, was also instituted upon the telephone at premises occupied by Wrisley, Parker, Parker's wife, and Allen LaFleur, as the tap later revealed. Most of the conversations relating to drugs over that line were carried on in "drug slang" or code. A large scale pattern of distribution of heroin, through "Ron" in Bristol, Allen LaFleur, Albert and LeBlanc in Terryville, and Robert Demicco in Waterbury, was revealed, and conversations relating to trips to Mexico by way of Tuscon, Arizona, to bring back heroin were monitored. During this tap,

conversations relating to the robbery and killing of an undercover agent, whose true identity was suspected, were intercepted by the State Police officers. (Defendant's Ex. 9; T-511, 515-16).

Trooper Petrowski again reviewed the logs of intercepted communications at the Plainville number and related those conversations to the Austin House tap and to the Regional Narcotic Squad investigation. His analysis of the tapes revealed that of the 298 intercepts under Order 73-04, 265 or 88% were pertinent to the investigation. Of the 33 non-pertinent calls, only 1 call was longer than two minutes. (Defendant's Ex. 9; T-1092-99, 1105). Again, Petrowski and the intercepting officers inquired of could detect no pattern of innocent communications. (Defendant's Ex. 9; T-1092-99, 1105). (T-511, 515-16,

747, 755, 1314, 1317, 1554, 1562-63, 1590, 1614-15, 1631, 1651, 1689).

Trooper Petrowski found that a pattern of coded and occasional references to drug trafficking developed within the course of otherwise innocent conversations. Such conversations showed a far-flung operation involving many persons, both male and female; involving Mexico and Arizona, with airline trips and auto rentals to bring large amounts of heroin to Connecticut; and involving distribution of heroin in various Connecticut cities and towns. It was also discovered during the wiretap that "Skip" was the defendant Parker, a former police officer. The interceptions themselves showed that the principals were fearful of a wiretap and had removed telephones from another premises to avoid the tap. (T-1068-90, 1093-98, 1176-99).

Conversations in which Wrisley, Parker, and Thompson were participants were overheard under Order 73-04, and conversations in which Black and Lepore were participants were overheard under Order 73-03. No conversations in which Wrisley or Parker were participants were overheard under Order 73-03. (Defendant's Ex. 2A; Defendant's Ex. 9). However, there were intercepted conversations that took place upon Wrisley and Parker's premises under the Austin House tap. (T-252).

RULINGS BELOW

Once the defendants were arrested upon bench warrants alleging narcotic violations, they filed motions to suppress. After a lengthy evidentiary hearing, the motion in the Parker case was granted by the trial court.

The court entered an order suppressing intercepted communications upon the failure of the monitoring officers to minimize the interception of communications not subject of the electronic surveillance order. The court's memorandum of decision related that the monitoring officers were not instructed with respect to the minimization requirement except for privileged calls involving an attorney, a physician or a clergyman, and the officers did monitor nearly 100% of the calls over the subject of the order telephones. (Appendix B at 15b-17b).

The ruling on the motion to suppress was the basis for the granting of a motion to dismiss in each file, there being no trial. Thereafter, the State took an appeal to the Connecticut Supreme Court, claiming that the trial court

misapplied the principles of Scott v. United States, 436 U.S. 128 (1978).

The Connecticut Supreme Court affirmed the trial court on a different basis as appears in its opinion found in Appendix A to this petition.

In its reply brief in the Connecticut Supreme Court, the State had argued that the officers were justified in listening to others than those named as the subscriber to the telephone in the wire interception order, as the officers had requested a wider authorization (Appendix D at 1d-par. 2, 2d-par. 7, 6d-par. 18-1, 9d-par. 5) and their application had been approved without condition (Appendix D at 20d-par. C). This argument was also urged on the Connecticut Supreme Court in support of the State's motions to reargue. (Appendix C).

The Connecticut Supreme Court rejected that argument. State v.

Thompson, 191 Conn. 360, 377, 464 A.2d 799, 810 (1983). (Appendix A at 17a). It also refused to consider the question of the good faith of the officers as to continuous monitoring of the subject telephones. 191 Conn. at 372, 464 A.2d at 807. (Appendix A at 12a). The Connecticut court then applied the fourth amendment and the exclusionary rule to suppress all wire interceptions under all wire interception orders. 191 Conn. at 374-84, 464 A.2d at 809-13. (Appendix A at 14a-23a).

The State respectfully petitions this Court to review the Connecticut Supreme Court's decision as it pertains to order number 73-04, the Wrisley order.

ARGUMENT

I

The Policies Underlying the Exclusionary Rule Do Not Require the Suppression of All Wire Interceptions Under the Circumstances of this Case.

The officers in this case sought authorization to intercept the communications of a number of individuals involved in a wide-ranging heroin trafficking enterprise and of those unknown. (Appendix D, Application for Order 73-04, at 1d-par. 2, 2d-par. 7, 6d-par. 18-1, 12d-16d-par. 13-27, 31-33). The application was approved without reservation by a panel of three judges required by Connecticut law. However, the order for interceptions also stated the interceptions were to be of the person identified as the subscriber of the subject telephone. (Appendix D, Order 73-04, at 20d-21d). In

implementing the wire interceptions, the officers listened to every telephone call directed to and from the subject telephone located in a house which was the center of the heroin ring.

The individuals involved in the criminal activity were listed in the application as those engaged in heroin trafficking, when their identities were known. (Appendix D, Application for Order 73-04, at 6d-par. 18-1). The trial court had suppressed all the interceptions because the police officers were not instructed with regard to minimization (Appendix B at 15b-17b), and the Connecticut Supreme Court upheld that action because the officers did not limit their interception to the one individual named in the wire interception order as the subscriber of the telephone, see State v. Thompson, 191 Conn. 360, 374-80, 464 A.2d 799, 809-11

(1983)(Appendix A at 14a-20a). In the opinion of the Connecticut Supreme Court, this violated the fourth amendment's requirement that electronic surveillance be authorized by a warrant issued by a neutral judicial officer. The Connecticut court cited Katz v. United States, 389 U.S. 347 (1967), and Berger v. New York, 388 U.S. 41 (1967), to this effect. See State v. Thompson, 191 Conn. at 376, 464 A.2d at 809-10. (Appendix A at 15a-16a).

The Connecticut Supreme Court further treated the panel's order that the application was approved without conditions as of no significance since the order mentioned the one person, the subscriber of the telephone as the person whose communications were to be intercepted. See State v. Thompson, 191 Conn. at 377, 464 A.2d at 810. (Appendix A at 17a).

Avoiding the clear intent and language of Scott v. United States, 436 U.S. 128 (1978), as no showing that a pattern of innocent communications arose which would allow for intelligent minimization of interceptions, the Connecticut Supreme Court limited the interceptions in what was obvious from the application and the submitted wire interception logs a wide-ranging heroin trafficking enterprise to that of one individual whose phone was to be the subject of the order and called listening to others a failure to minimize interceptions calling for total suppression of the fruits of those intercepts.

No others, even those unknown to the applicants and those named using the telephone to traffick in narcotics could be overheard since the form, a copy of which is set forth in Appendix D, failed

to include "and others unknown" in the order, even though the officers sought such authority in their application which was approved.

In Commonwealth v. Sheppard, 387 Mass. 488, 441 NE 2d 725 (1982), the officer acting in good faith reliance upon a defective search warrant seized evidence in a homicide investigation. This Court granted certiorari to consider the issue whether the evidence should have been suppressed. Massachusetts v. Sheppard, - U.S. -, 103 S.Ct. 3534 (1983). In this case, the officers received what the State submits was at least an ambiguous direction to seize evidence. The Connecticut Supreme Court stated it was not ambiguous, "regardless of its [the approval of the application without conditions] actual meaning," and suppressed all the evidence so seized.

See State v. Thompson, 191 Conn. at 377, 464 A.2d at 810. (Appendix A at 17a).

The State of Connecticut respectfully submits under these circumstances no policy supposedly served by the exclusionary rule under the fourth amendment requires such a drastic result.

CONCLUSION

For the above reasons, the State of Connecticut asks this Court to grant a writ of certiorari to review the decision of the Connecticut Supreme Court.

THE STATE OF CONNECTICUT

BY S/_____
Francis M. McDonald
State's Attorney
Judicial District of Waterbury

BY S/_____
Bradford J. Ward
Assistant State's Attorney
Judicial District of Waterbury

APPENDIX

APPENDIX

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APPENDIX A

STATE OF CONNECTICUT *v.* NEIL J. THOMPSON
STATE OF CONNECTICUT *v.* ROBERT E. PARKER, JR.
STATE OF CONNECTICUT *v.* JAMES C. BLACK
STATE OF CONNECTICUT *v.* FRANK P. LEPORE
(8359)
(8360)
(8362)
(8363)

SPEZIALE, C. J., PETERS, SHEA, GRILLO and COVELLO, Js.

Argued May 4—decision released September 6, 1983

Information in each case charging the defendant with the crime of conspiracy to distribute, sell, dispense, compound, and transport with intent to sell and dispense heroin, brought to the Superior Court in the judicial district of Waterbury, where the trial court, *McGrath, J.*, granted in each case the defendant's motion to suppress intercepted wire communications, and the court, *O'Brien, J.*, rendered judgment in each case dismissing the information, from which the state, on the granting of permission, appealed to this court. *No error.*

Francis M. McDonald, state's attorney, with whom were *Bradford J. Ward*, assistant state's attorney, and, on the brief, *Austin J. McGuigan*, chief state's attorney, for the appellant in each case (state).

Maxwell Heiman, with whom were *Louis S. Avitabile, John D. Jessep, Robert M. Richards* and, on the brief, *William J. Tracy, Jr.*, for the appellee (defendant Parker).

Louis S. Avitabile, for the appellee (defendant Thompson).

PETERS, J. These appeals concern the extent to which the state police are required to minimize electronic surveillance when conducting telephone wiretaps pursuant to General Statutes § 54-

41a et seq. (wiretap statute), in the course of a narcotics investigation. In each case, the trial court dismissed informations charging the defendants Neil J. Thompson, Robert E. Parker, Jr., James C. Black, and Frank P. LePore with conspiracy to possess and distribute narcotics, after the defendants successfully moved, on the basis of inadequate minimization, to suppress evidence obtained from the wiretaps.[1] From the judgments of dismissal, the state has appealed.[2]

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1. The defendants and others were charged by a single information with conspiracy to distribute, sell, dispense, compound, and transport with intent to sell and dispense heroin, in violation of General Statutes § 53a-48 and 19-480a (now § 21a-278). The defendant Parker's motion to suppress the contents of intercepted wire communications was granted by the trial court, *McGrath, J.*, on September 6, 1974, after an extensive evidentiary hearing. The trial court based its suppression order entirely on the state's failure to minimize, and rejected the defendant's claims (a) that General Statutes § 54-41a et seq. violates the fourth amendment to the United States constitution and (b) that the police failed to make timely return of the tape recordings to the issuing panel, in violation of General Statutes § 54-41i. The state's motion to reargue the suppression motion was denied by the court, *Levine, J.*, on July 22, 1976. Thereafter the defendant moved to dismiss the information, arguing that the facts alleged in the affidavit supporting the bench warrant for his arrest were based on the suppressed evidence. The motion to dismiss was granted by the trial court, *O'Brien, J.*, on July 28, 1976.

   Also on July 28, 1976, the trial court *O'Brien, J.*, granted the motions of the defendants Thompson, Black and LePore to suppress evidence obtained in the same wiretaps, based on the suppression order in the Parker case. Accordingly, the informations in those cases were dismissed as well. The state thereafter obtained permission to file a single brief for all four appeals, having conceded that the prosecutions arose from the same factual situation. Of the defendants, only Parker and Thompson filed briefs; Thompson, Black and LePore indicated their willingness to rely on the Parker brief.

2. The delay in the filing of the state's brief in these cases prompted this court to issue, sua sponte, a decree nisi on October 2, 1979, dismissing the state's appeal for failure to prosecute with proper diligence, to take

The trial court, *McGrath, J.*, in its memorandum of decision, found the following facts, now undisputed, concerning the wiretaps at issue in this case: On March 9, 1973, the state's attorneys for Litchfield county and New Haven county at Waterbury applied to a three judge panel for permission to intercept wire communications, pursuant to General Statutes § 54-41b.[3] The application sought authorization to tap two public pay telephones, one located in the lobby of the Austin House Hotel in Terryville and one located just outside the hotel, in order to overhear the conversations of Arnold Albert "and others unknown." The application contained an affidavit purporting to establish the necessity for the pro-

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effect unless the state filed its brief by November 15, 1979. The state complied with the decree, explaining the delay as the result of preparation of the transcript from the lengthy suppression hearing.

The case files disclose no attempt by the defendants to have the appeals dismissed due to the delay. After the state submitted its brief, the defendants obtained numerous extensions to file their own briefs. On December 2, 1980, this court, sua sponte, issued a nisi order, subsequently rescinded, directing judgment against the defendant LePore for failure to defend the appeal with proper diligence.

At oral argument, we voiced a concern that the time which has elapsed since the investigative phase of these matters might render unlikely a prosecution at this late date. The state offered assurance, however, that in the event the present appeals are resolved in its favor, the state intends to proceed in its prosecution of the defendants.

3. "[General Statutes] Sec. 54-41b. APPLICATION FOR ORDER AUTHORIZING INTERCEPTION. The state's attorney for the judicial district in which the interception is to be conducted may make application to a panel of judges for an order authorizing the interception of any wire communication by investigative officers having responsibility for the investigation of offenses as to which the application is made when such interception may provide evidence of the commission of offenses involving gambling, bribery, violations of section 53-395, violations of section 21a-277 or felonious crimes of violence."

posed wiretap.[4] This affidavit alleged: that Albert and others, including Albert's partner Joseph LeBlond, were importing Mexican heroin into the state and selling it; that Albert and LeBlond were residing at the Austin House Hotel; that Albert used its two public telephones for narcotics transactions; and that the records of calls made from the lobby telephone indicated a continuous pattern of long distance calls to persons in Connecticut known to be heroin dealers and users. The application asked, therefore, for a ten day tap, for twenty-four hours each day, of both public telephones in order to discover the source of Albert's heroin and the extent of his heroin trafficking. The affidavit stated in an amendment, filed on March 14, 1973, that those officers who would conduct the wiretap had been trained in electronic surveillance by the Connecticut, New York or New Jersey state police departments.

The panel, on March 15, 1973, issued order 73-03 "to intercept the telephone communications of Arnold Albert residing/having his place of business at: Austin Hotel, Plymouth, Conn., from 5 p.m. on 15 March 1973 to 5 p.m. on 25 March 1973." The order contained the statutory requirement that the surveillance be "con-

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4. "[General Statutes] Sec. 54-41c. INFORMATION IN APPLICATION. Each application for an order authorizing the interception of a wire communication shall be made in writing upon oath or affirmation to a panel of judges. Each application shall include the following information: . . . (2) the identity and qualifications of the investigative officers or agency for whom the authority to intercept a wire communication is sought; . . . (5) . . . (A) details as to the particular offense that has been or is being committed, (B) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (C) a particular description of the type of communications sought to be intercepted, (D) the identity of the person, if known, who has committed or is committing the offense and whose communications are to be intercepted."

ducted in such a way as to minimize the interception of communications not otherwise subject to interception . . . ."[5]

In the order itself and in the documents accompanying the order,[6] only Albert was identified as the person whose conversations were to be intercepted. Although the order indicated generally that the state's application had been approved without condition, the order did not expressly authorize interception with respect to "others unknown," which the state's application had sought.

The wiretap operations pursuant to the authorized interception of the public telephones at the Austin House Hotel led to a request for a ten day extension of order 73-03. The wiretap panel authorized an extension on the same terms as the original order. Thereafter, on the basis of intercepted evidence that a telephone in

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5. "[General Statutes] Sec. 54-41e. STATEMENT BY PANEL ON ISSUANCE OF ORDER. CONTENTS OF ORDER. Each order authorizing the interception of any wire communication shall be accompanied by a written statement of the issuing panel setting forth in detail its determination made in accordance with the provisions of section 54-41d and the grounds therefor and shall specify: (1) The identity of the person, if known, whose communications are to be intercepted; (2) the nature and location of the communication facilities as to which or the place where authority to intercept is granted; (3) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates; . . . (11) . . . Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, *shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception* in accordance with the provisions of this chapter, and shall terminate upon attainment of the authorized objective, or in any event within fifteen days next succeeding the date of issuance of such order." (Emphasis added.)

6. In addition to the order itself, the panel is required to prepare a statement pursuant to General Statutes § 54-41e (see footnote 5, supra) and a report to be submitted to the chief court administrator. General Statutes § 54-41n.

Plainville was being used to conduct narcotics operations, the state applied for a second wiretap order. In this application, the state sought "to intercept the wire communications of Daniel A.Wrisley, a/k/a Daniel A. Risley and others unknown" over the telephone listed in his name, in light of evidence procured from the 73-03 wiretap, and elsewhere, which indicated that Wrisley's telephone was being used for narcotics transactions. The application again stated, as had the application for 73-03, that the monitoring officers for the proposed wiretap had been trained in electronic surveillance by the Connecticut, New York or New Jersey state police. The three judge panel approved the application and issued wiretap order 73-04 but again restricted its operation to Wrisley personally, furnishing express authority only "to intercept the telephone communications of (subscriber): Daniel A. Risley residing/having his place of business at: 17 Dewey Place, Plainville, Conn., from 6 p.m. on 28 March 1973 to 6 p.m. on 7 April 1973, inclusive, during 24 hours of each day." Surveillance pursuant to order 73-04 resulted in a successful application to the wiretap panel for a ten day extension of that order. In its extension application, the state relied in part on potentially incriminating conversations, to which Wrisley was not a party, of another person (defendant Parker) who was using the Wrisley telephone to conduct narcotics trafficking. The extension of order 73-04 modified only its date of expiration.

The trial court found that surveillance pursuant to the authorized wiretaps took the form of indiscriminate listening to all communications on the tapped telephones. Although the monitoring equipment could have been shut off or turned down upon a determination that an ongoing conversation was innocent, the police officers assigned to the wirtaps had received little or no instruction with respect to the statutory requirement of minimization. At most,

some officers were instructed not to monitor privileged conversations in which one party was a clergyman, doctor or lawyer.[7] Consequently, with the exception of a single call involving a doctor, every call made over the tapped telephones, the public telephones under order 73-03 and the private telephone under order 73-04, was overheard and recorded in full. All calls were summarized in written logs maintained by the monitoring officers.

Although the state argued that narcotics investigations require unlimited interceptions because initially innocuous conversations may subsequently turn to narcotic related subjects and may use narcotic related code words, the trial court concluded that the surveilling agents had failed to comply with the minimization mandates of the wiretap orders themselves and of the statute. The court acknowledged that assessment of minimization depended "upon the facts and circumstances of each case." It recognized the practical difficulties of minimization but refused nonetheless to limit the responsibility to minimize to privileged communications. Because a communication once seized, no matter how wrongly, can never be given back, the court noted that "the right of privacy protected by the fourth amendment has been more invaded where a conversation which can never be returned has been seized than where a physical object which can be returned has been seized." On this basis, the trial court granted the defendants' motions to suppress the evidence obtained through the state's electronic sur-

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7. "[General Statutes] Sec. 54-41h. PRIVILEGED WIRE COMMUNICATIONS; ISSUANCE OF ORDER AND INTERCEPTION PROHIBITED. If the facilities from which, or the place where, the wire communications are to be intercepted are being used, or are about to be used, or are leased to, listed in the name of, or commonly used by, a licensed physician, an attorney-at-law or a practicing clergyman, no order shall be issued and no wire communications shall be intercepted over such facilities or in such places. No otherwise privileged wire communications intercepted in accordance with, or in violation of, the provisions of this chapter shall lose their privileged character, nor shall any evidence derived therefrom be used for any purpose."

veillance. The informations against the defendants were thereafter dismissed.

The state raises three issues on appeal. First, it argues that, in determining that the monitoring officers failed to comply with the minimization requirement, the trial court applied an incorrect standard, focusing on the subjective intent of the officers rather than on the objective reasonableness of their conduct under all the circumstances. Second, it argues that, under the circumstances of the present case, it was not objectively unreasonable for the officers to listen to all conversations during the conduct of the wiretaps. Third, it argues that even if the wiretaps were conducted in violation of the minimization requirement, the proper remedy was the suppression only of those conversations which would not have been overheard had proper minimization been effected. We find no error.

I

The state's first claim of error addresses the standard by which compliance with the minimization required is to be measured. The state maintains that the trial court mistakenly relied on a subjective federal standard which the United States Supreme Court subsequently rejected in *Scott v. United States,* 436 U.S. 128, 98 S. Ct. 1717, 56 L. Ed. 2d 168, reh. denied, 438 U.S. 908, 98 S. Ct. 3127, 57 L. Ed. 2d 1150 (1978). Interpreting the minimization requirement of 18 U.S.C. § 2518 (5) (1976 Ed.),[8] *Scott* held that the federal statute was not necessarily violated by failure to make good faith efforts to comply with the statute's requirement

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8. 18 U.S.C. § 2518(5) provides in relevant part: "Every order [entered under this section] and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in thirty days."

for minimization. Id., 135-36. Although the record in *Scott* showed that all conversations over the tapped telephones were recorded and only 40 percent were related to the stated subject of the investigation, the Supreme Court held that: "The statute does not forbid the interception of all nonrelevant conversations, but rather instructs the agents to conduct the surveillance in such a manner as to 'minimize' the interception of such conversations. Whether the agents have in fact conducted the wiretap in such a manner will depend on the facts and circumstances of each case." Id., 140.

The state argues that the trial court failed to follow the rule in *Scott* because it attributed dispositive weight to the police officers' indiscriminate listening to all intercepted communications over the tapped telephone lines. We note that the trial court also stated that resolution of the minimization question depended upon the facts and circumstances of each case. We are not persuaded that these divergent strands in the memorandum of decision necessarily signal that the trial court applied an incorrect standard.

The trial court was entitled to give some weight to the failure of the state's agents to attempt minimization. It is true that the case law after *Scott* counsels us that it may be difficult to screen intercepted conversations for pertinency, especially when the investigation focuses on a widespread conspiracy and when the investigation has not yet proceeded to establish patterns of conversations. *United States v. Napolitano,* 552 F. Sup. 465, 476 (S.D. N.Y. 1982); see *Scott v. United States,* supra, 140-42; *United States v. Feldman,* 606 F.2d 673, 678 (6th Cir. 1979), cert. denied sub nom. *United States v. Zalmonowski,* 445 U.S. 961, 100 S. Ct. 1648, 64 L. Ed. 2d 236 (1980); *United States v. Dorfman,* 542 F. Sup. 345, 390 (N.D. Ill.), aff'd, 690 F.2d 1217 (7th Cir. 1982); *United States v. Webster,* 473 F. Sup. 586, 597 (D. Md. 1979), aff'd in part, rev'd in part on other grounds, 639 F.2d 174 (4th Cir. 1981), aff'd and modified, 669 F.2d 185 (4th Cir. 1982), cert. denied, 456 U.S. 935, 102 S. Ct. 1991, 72 L. Ed. 2d 455 (1982); accord, *United States v. Hyde,* 574 F.

2d 856, 869-70 (5th Cir.), reh. and reh. en banc denied (5th Cir. 1978); *United States v. Clerkley,* 556 F.2d 709, 716-18 (4th Cir. 1977), cert. denied sub nom. *Shade v. United States,* 436 U. S. 930, 98 S. Ct. 2830, 56 L. Ed. 2d 775 (1978); *United States v. Quintana,* 508 F.2d 867, 873-76 (7th Cir. 1975); see also Fishman, Wiretapping and Eavesdropping, §§ 152-155 (1978); Fishman, "The 'Minimization' Requirement in Electronic Surveillance: Title III, The Fourth Amendment, and the Dread *Scott* Decision," 28 Am. U. L. Rev. 315, 338-43 (1979). Recent federal cases, however, permit inquiry into the good faith of the monitoring agents as a relevant although not a dispositive factor in minimization. *United States v. Santora,* 600 F.2d 1317, 1320 (9th Cir.), modified, 609 F.2d 433 (9th Cir. 1979); *United States v. Suquet,* 547 F. Sup. 1034, 1042 (N.D. Ill. 1982); contra, *United States v. Feldman,* supra, 678 n.10; *United States v. Dorfman,* supra, 390 n.49. Total failure to attempt minimization is also implicitly discountenanced by those federal cases that insist that "[b]efore evidence seized under [18 U.S.C. § 2518 (5) (1976)] may be admitted, the court must be 'left with the conviction that on the whole the agents have shown a high regard for the right of privacy and have done all they reasonably could to avoid unnecessary intrusion.' *United States v. Tortorello,* 480 F.2d 764, 784 (2d Cir.), cert. denied, 414 U. S. 866, 94 S. Ct. 63, 38 L. Ed. 2d 86 (1973)." *United States v. DePalma,* 461 F. Sup. 800, 817 (S.D.N.Y. 1978) (decided after *Scott*); see *United States v. Clerkley,* supra, 716. Furthermore, we note that *Scott* itself in dictum states that the motive of the officers may be relevant in designing a remedy once the illegality of the wiretap is otherwise established. *Scott v. United States,* supra, 139 n.13. In our view, therefore, federal law does not preclude all inquiry into whether the conduct of police officers constituted indiscriminate listening.

Even more important, it is clear that the federal standard, while it establishes minimum guidelines for safeguarding individual freedom from unlawful electronic surveillance; see U.S.C. § 2516 (2) (1976); in no way prevents states from enacting stricter safe-

guards; *State v. Grant,* 176 Conn. 17, 25, 404 A.2d 873 (1978); see *Warden v. Kahn,* 99 Cal. App. 3d 805, 810, 160 Cal. Rptr. 471 (1979); *State v. Ayers,* 118 N.H. 90, 91, 383 A.2d 87 (1978); *State v. Catania,* 85 N.J. 418, 436, 427 A.2d 537 (1981); *People v. Brenes,* 42 N.Y. 2d 41, 46, 396 N.Y.S. 2d 629, 364 N.E. 2d 1322 (1977); "and courts may construe their own state's wiretap law so as to afford their citizens additional protection." *State v. Catania,* supra, 436; see *People v. Brenes,* supra, 46. The New York Court of Appeals, construing a statutory minimization requirement identical to that of our own state, has required the government to demonstrate "that procedures were established to minimize interception of nonpertinent communications and that a conscientious effort was made to follow such procedures." *People v. Floyd,* 41 N.Y. 2d 245, 250, 392 N.Y.S. 2d 257, 360 N.E. 2d 935 (1976); see *United States v. Lilla,* 534 F. Sup. 1247, 1266-67 (N.D.N.Y. 1982); *People v. Brenes,* supra. The New Jersey Supreme Court, similarly, has held "that subjective good faith will be required in addition to actual objective reasonableness in all minimization efforts." *State v. Catania,* supra, 436.

We have previously recognized that our own wiretap statute is in many ways more stringent than the federal act. *State v. Grant,* supra, 25, 25 n.3; see 14 S. Proc., Pt. 2, 1971 Sess., pp. 849 (remarks of Sen. Jay Jackson), 855 (remarks of Sen. James Macauley). While the federal minimization language is substantially identical to Connecticut's,[9] the state minimization provision now requires that surveillance orders terminate within fifteen days. The more permissive federal act, on the other hand, allows

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9. See footnote 5, supra, for relevant portion of General Statutes § 54-41e (11). See footnote 8, supra, for text of 18 U.S.C. § 2518(5) (1976).

thirty days of surveillance. The fifteen day limit is itself a form of extrinsic minimization[10] evidencing a strict approach on the part of our legislature with respect to the minimization question.

Resolution of the appropriate weight to be assigned good faith can wait another day, however. The record in the present appeal does not require us to resolve the ambiguity inherent in the trial court's memorandum of decision.[11] Whatever standard the trial court adopted, or should have adopted, the present record demonstrates, for the reasons set out below, that the state police violated the minimization mandate of the wiretap statute and of orders 73-03 and 73-04.

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10. "Extrinsic minimization involves limiting the time period during which monitoring is conducted." Fishman, Wiretapping and Eavesdropping, § 151 (1978). "[T]here is some reason to think that restricting the time of listening in was thought by Congress to be the, or at least a, principal method of minimizing. See, e.g., Senate Report No. 1097, 90th Cong., 2d Sess., Judiciary Committee, Apr. 29, 1968, to accompany S. 917 reproduced in 1968 U.S. Code Cong. & Adm. News, p. 2112, at p. 2190, 2192-93." *United States v. Chavez*, 533 F.2d 491, 493 (9th Cir.), cert. denied, 426 U.S. 911, 96 S. Ct. 2237, 48 L. Ed. 2d 837 (1976).

11. Because of the death of the trial court judge while this appeal was pending, we cannot remand for further articulation to ascertain the weight given to the monitoring officer's failure to attempt minimization. We note, however, that, in response to the state's motion to reargue, the trial court, *Levine, J.*, found no inconsistency between the memorandum of decision of *McGrath, J.*, and the District of Columbia Court of Appeals decision in *United States v. Scott*, 516 F.2d 751 (D.C. Cir. 1975), reh. and reh. en banc denied, 522 F.2d 1333 (D.C. Cir. 1975), cert. denied, 425 U.S. 917, 96 S. Ct. 1519, 47 L. Ed. 2d 768 (1976). The Court of Appeals decision was approved by the United States Supreme Court in the principal case of *Scott v. United States*, 436 U.S. 128, 98 S. Ct. 1717, 56 L. Ed. 2d 168, reh. denied, 438 U.S. 908, 98 S. Ct. 3127, 57 L. Ed. 2d 1150 (1978).

II

The state contends as a matter of fact that overhearing every telephone conversation in the present case was objectively reasonable because it was impossible to determine the pertinency of each call until the call terminated. The state supports this factual claim by alleging the high percentage of conversations pertinent to the complex narcotics conspiracy under investigation, and the brevity of the nonpertinent calls.

It is not the function of this court to make full-scale factual findings de novo. Thus our review of the state's allegations is limited to determining whether, during the suppression hearing, the state met its burden of making a prima facie showing of compliance with the minimization requirement.[12] If the state met its burden of demonstrating the impossibility of effecting further minimization, then the burden shifted to the defendant to demonstrate the state's failure to minimize. *United States v. Rizzo,* 491 F.2d 215, 217 (2d Cir.), cert. denied, 416 U.S. 990, 94 S. Ct. 2399, 40 L. Ed. 2d 769 (1974); *United States v. Suquet,* 547 F. Sup. 1034, 1045 (N.D. Ill. 1982); *United States v. Cale,* 508 F. Sup. 1038, 1041 (S.D.N.Y. 1981). We conclude that, even under the minimization standard it urges us to adopt, the state did not meet its burden.

It is true that many officers at the suppression hearing testified to the impossibility of ascertaining pertinency prior to the termination of calls, and to the absence of any "pattern of innocent calls" which might have established a basis for excluding from surveillance calls falling within that pattern.[13] Furthermore, State

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12. Since there are no issues of credibility in such a determination, it may appropriately be made by a reviewing court. See *Ivey, Barnum & O'Mara v. Indian Harbor Properties, Inc.,* 190 Conn. 528, 530 n.2, A.2d (1983); *Drazen v. Drazen,* 180 Conn. 572, 573 n.3, 430 A.2d 1288 (1980).

13. This same testimony did not claim that any attempt was made to minimize. Rather, the testimony was to the effect that, even if such an attempt had been made, no calls could have been excluded from surveillance.

Trooper John Petrowski, who supervised the surveillance, submitted to the trial court a pertinency analysis of overheard calls, based on his review of the logs prepared, contemporaneously with the surveillance, by the monitoring officers. That analysis alleged that of the 149 calls overheard on the Austin House Hotel lobby telephone during the first six days of wiretap order 73-03, 52 percent were pertinent to the investigation. Of the 68 nonpertinent calls, only eight exceeded two minutes in length. Of the 298 calls intercepted pursuant to order 73-04, 88 percent were pertinent. Of the 33 nonpertinent calls under order 73-04, only one exceeded two minutes in length. While the definition of pertinency was the subject of some disagreement among the officers who testified at the hearing, Trooper Petrowski deemed pertinent any narcotics-related conversation and any conversation to which a person under investigation was a party.

Our assessment of the state's case is hampered by the state's failure to offer a pertinency analysis of the great majority of calls made pursuant to order 73-03.[14] Without such an analysis, the trial court was not bound to credit the state's conclusory claim that only a small percentage of innocent calls exceeded two minutes in length.

The state's case is marred, however, by a deficiency more grave than this. The state contends that in determining, for minimization purposes, whether a call should have been excluded from surveillance, the inquiry is whether the call was germane to the overall investigation. Such is not the case: "The term minimization is a shorthand expression which represents the government's obligation to reduce to the extent possible interceptions of conversations which are not the subject of *the court order.*" (Emphasis added.) *United*

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14. As we have noted, two public telephones were tapped at the Austin House Hotel pursuant to order 73-03. One was located in the lobby and one outside the hotel. The taps lasted twenty days each. The state's call analysis is restricted to calls overheard on the inside phone during the first six days of the tap.

States v. Dorfman, 542 F. Sup. 345, 390 (N.D. Ill.), aff'd, 690 F.2d 1217 (7th Cir. 1982). Court orders 73-03 and 73-04 were for the interceptions of calls of Arnold Albert and Daniel Wrisley, respectively, not of the calls of their alleged coconspirators. Concededly, orders such as were issued in the present case permit the overhearing of unnamed individuals who are parties to the conversations of those named in the order. *United States v. Kahn*, 415 U. S. 143, 156, 94 S. Ct. 977, 39 L. Ed. 2d 225 (1974). Before an order can be said to permit surveillance of persons who are neither named in the order nor conversing with persons named in the order, however, the language "and conversations of others unknown," or some clear equivalent thereto, must appear on the face of the order.[15]

Any other interpretation of the order's language would, we believe, vest the executing officer with discretion to determine the scope of the surveillance, in contravention of requirements contained in the fourth amendment to the United States constitution, in article first, § 7 of the constitution of Connecticut, and in the wiretap statute itself. "[T]he Fourth Amendment confines an

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15. The state contends that *United States v. Kahn*, 415 U.S. 143, 154-55, 94 S. Ct. 977, 39 L. Ed. 2d 225 (1974) holds "that the interception of conversations between persons unnamed in the order is proper so long as the conversations pertained to the subject matter within the purpose of the wire interception." We disagree with the state's interpretation. *United States v. Kahn*, upheld the validity of an order permitting surveillance of a named subject "and others as yet unknown." Id., 156. In determining the permissible scope of the warrant, the Supreme Court found the quoted language dispositive; id.; and interpreted its meaning exactly as we do. Id.; accord, *United States v. O'Neill*, 497 F.2d 1020, 1022-23, (6th Cir. 1974). Compare *United States v. Capra*, 501 F.2d 267, 276 (2d Cir. 1974), cert. denied, 420 U.S. 990, 95 S. Ct. 1424, 43 L. Ed. 2d 670 (1975) (requiring suppression of conversations of party who was neither named in order nor conversing with named party, when order permitted only "the interception of telephone communications of [named suspect] with co-conspirators, accomplices and agents"; id., 273) with *United States v.*

officer executing a search warrant strictly within the bounds set by the warrant." *Bivens v. Six Unknown Federal Narcotics Agents,* 403 U. S. 388, 394 n.7, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971); *Marron v. United States,* 275 U. S. 192, 196, 48 S. Ct. 74, 72 L. Ed. 231 (1927); *United States v. Heldt,* 668 F.2d 1238, 1260 (D.C. Cir. 1981), cert. denied sub nom. *United States v. Hubbard,* 456 U. S. 926, 102 S. Ct. 1971, 72 L. Ed. 2d 440 (1982). To permit the executing officer to exceed those bounds would eviscerate the fourth amendment's requirement that electronic surveillance be authorized by a warrant issued by a neutral judicial officer. *Katz v. United States,* 389 U. S. 347, 354-59, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967); *Berger v. New York,* 388 U. S. 41, 54-55, 87 S. Ct. 1873, 18 L. Ed. 2d 1040 (1967).

We emphasize that in construing the orders the issue is not whether the three judge panel could reasonably have issued broader ones. We assume arguendo that a broader order might well have issued for each wiretap. The scope of the wiretaps was for the panel to decide. In shaping its orders, the panel had discretion to narrow the permitted field of surveillance as it did. See General

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Principie, 531 F.2d 1132, 1137-38 (2d Cir. 1976), cert. denied, 430 U.S. 905, 97 S. Ct. 1173, 51 L. Ed. 2d 581 (1977) (refusing to suppress conversations between two unnamed parties when order permitted interception of "the telephone communications of [named suspect], his co-conspirators, agents and associates"; id., 1135); see generally Fishman, Wiretapping and Eavesdropping (1978) §§ 49, 50 and esp. 110. Contra, *People v. Palozzi,* 44 App. Div. 2d 224, 227, 353 N.Y.S.2d 987 (1974). In *Palozzi* the trial court suppressed conversations between two persons, neither of whom was the subject named in the warrant. *People v. Palozzi,* 74 Misc. 2d 774, 778, 346 N.Y.S.2d 595 (1973). The appellate division reversed on the ground that the express language of the warrant permitted "interception of the target phone to secure supervision of the persons involved in gambling activities"; *People v. Palozzi,* 44 App. Div. 2d 224, 226, 353 N.Y.S.2d 987 (1974); but also implied that, under *United States v. Kahn,* a narrower order would also have permitted interception of the conversations in question. Id., 226-27.

Statutes § 54-41d; cf. Mass. Gen. Laws Ann. c. 272 § 99 (I) (3) (1980).[16]

The state contends that the surrounding circumstances and certain language in the orders, however, indicate that the three judge panel approved the interception of all calls. This argument, which we find unpersuasive, consists of three parts.

First, noting that the wiretap applications sought to intercept the calls "of others unknown" in addition to Albert and Wrisley, the state argues that the panel's designation of the "approved" box on the order forms, instead of the "approved with conditions" box, had the effect of incorporating by reference the "and others unknown" language contained in the applications. We read the panel's designation as merely indicating that the state's application required no further amendment. We note that the panel had previously delayed action on the application pending the submission of an amendment by the state. Regardless of its actual meaning, however, the designation of the preprinted box is too ambiguous to contradict the clear language of the order itself.[17]

Second, the state contends that the parenthetical designation of Wrisley as "subscriber" on application 73-04 indicates that it was his telephone, and not Wrisley himself, that was the subject of the wiretap order. We disagree. The word "subscriber" was preprinted on the order form. In order 73-03, where it was inappro-

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16. The Massachusetts wiretap statute requires the order to specify the person to be overheard. It omits the "if known" language of the Connecticut statute. Mass. Gen. Laws Ann. c. 272 § 99(I)(3)(1980). See Carr, The Law of Electronic Surveillance § 4.07 [1]. In Connecticut, the question of whether unnamed parties may be overheard is left to the issuing panel. Of course the greater latitude given the panel by the Connecticut statute in no way mandates the inclusion of "others unknown" in the scope of a particular order.

17. The case cited by the state in support of its incorporation-by-reference argument is *United States v. Tortorello*, 480 F.2d 764, 781 (2d Cir.), cert. denied, 414 U.S. 866, 94 S. Ct. 63, 38 L. Ed. 2d 86 (1973). In

priate, it was simply crossed out. No particular significance, short of the fact that the subscriber of the telephone may typically be the subject of the proposed wiretap, should be attached to it. Nor can it be said, as a matter of law, that a warrant to overhear a subscriber's conversations constitutes a warrant to overhear the conversations of all others who may use that telephone. As the wiretap statute explicitly recognizes, the privacy interest of one using a telephone is distinct from the privacy interest of the owner of the premises where the telephone is located. General Statutes §§ 54-41a(10), 54-41m. See also *Katz v. United States,* 389 U. S. 347, 351-52, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967). Of course, the fact that the wiretap was conducted on a residential telephone may remain relevant in determining the adequacy of minimization procedures. *Scott v. United States,* 436 U. S. 128, 140, 98 S. Ct. 1717, 56 L. Ed. 2d 168, reh. denied, 438 U. S. 908, 98 S. Ct. 3127, 57 L. Ed. 2d 1150 (1978).

Third, noting that the extension applications acknowledged conversations, already overheard, which did not include the named parties, the state argues that the panel's granting of the extensions implicitly ratified the state's manner of executing the wiretaps. We again disagree. The extension application was not an adversary

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that case the greater specificity of the incorporated application cured the dearth of specificity in the order itself. See also *United States v. Heldt,* 668 F.2d 1238, 1260 (D.C. Cir. 1981), cert. denied sub nom. *United States v. Hubbard,* 456 U.S. 926, 102 S. Ct. 1971, 72 L. Ed 2d 440 (1982); *Hudson v. State,* 368 So. 2d 899, 903-904 (Fla. App. 1979). Because we find no incorporation by reference in the present case we express no opinion regarding the converse proposition advanced by the state: that a search which exceeds the particularized scope of the warrant may be justified based on the more general scope of the incorporated application. We note that this argument has been rejected by the District of Columbia Court of Appeals. *Moore v. United States,* 461 F.2d 1236, 1238-39 (D.C. Cir. 1972).

proceeding and the cited conversations were relevant only to determine the existence of probable cause. There is no reason to think that the panel, in issuing its ex parte order, even considered, let alone ratified, the manner in which the wiretaps were being conducted.[18]

The minimization issue in the present case may therefore be stated as follows: Was it possible for the state to minimize surveillance so as to exclude conversations not involving, for order 73-03, Arnold Albert, and for order 73-04, David Wrisley? The state has made no claim that it was impossible to recognize, or to learn to recognize, the voices of these individuals. The testimony of the officers indicates, to the contrary, that it was entirely possible. For example, for order 73-03, during an eight hour shift on March 18, 1973, ten calls were fully intercepted, none of them involving Albert; on a March 20, 1973, shift, nineteen calls were intercepted, none involving Albert. In fact, for a period of several days inclusive of these shifts, close to 100 calls were monitored to which Albert was not a party. Our own examination of the logs of wiretap No. 73-04 indicates that the majority of the calls did not involve Wrisley as a party, and that the parties to most calls were readily identified by the monitoring officer.

In light of these circumstances, we conclude that if the state had reasonably attempted minimization, a great number of conversations outside the scope of orders 73-03 and 73-04 could have been

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18. Even if we were to assume, arguendo, that the panel was cognizant of the unauthorized surveillance in which the police were engaged, it is doubtful that the panel would have had the authority retrospectively to enlarge the scope of the search authorized by its prior order. "A transaction capable of ratification can be ratified if, but only if, the purported principal can authorize such a transaction at the time of affirmance . . . ." 1 Restatement (Second), Agency § 86 (1957).

excluded from surveillance.[19] The wiretaps were therefore conducted in violation of the minimization requirement. *Scott v. United States,* supra, 134.

III

The state's final argument is that, even if the conduct of the wiretap violated the minimization requirement, suppression is warranted only of those calls which should properly have been excluded from surveillance. The issue which the state raises was expressly reserved in *Scott v. United States,* supra, 135 n.10; and remains the subject of controversy in the courts.

One line of cases, which the state urges us to follow, holds that conversations contemplated by the warrant are admissible even if conversations extraneous to the warrant have been overheard. *United States v. Cox,* 462 F.2d 1293, 1301-1302 (8th Cir. 1972), cert. denied, 417 U. S. 918, 94 S. Ct. 2623, 41 L. Ed. 2d 223 (1974); *United States v. Dorfman,* 542 F. Sup. 345, 394-95 (N.D. Ill.), aff'd, 690 F.2d 1217 (7th Cir. 1982); *United States v. Sisca,* 361 F. Sup. 735, 746-47 (S.D.N.Y. 1973), aff'd, 503 F.2d 1337 (2d Cir.), cert. denied, 419 U. S. 1008, 95 S. Ct. 328, 42 L. Ed. 2d 283 (1974). Other courts require the total suppression of all communications wherever the minimization requirement is violated. *United States v. Focarile,* 340 F. Sup. 1033, 1047 (D. Md.), aff'd sub nom. *United States v. Giordano,* 469 F.2d 522 (4th Cir. 1972), aff'd, 473 F.2d 906 (4th Cir. 1973), aff'd, 416 U. S. 505, 94 S. Ct. 1820, 40 L. Ed. 2d 341 (1974); *United*

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19. Because we agree with the trial court that the conduct of wiretap order 73-04 was in violation of the minimization requirement, it is unnecessary to consider the state's claim that the evidence showing probable cause for issuance of order 73-04 was obtained independently of the fruits of wiretap order 73-03. For discussion of such a claim, see *United States v. Giordano,* 416 U.S. 505, 530-33, 94 S. Ct. 1820, 40 L. Ed. 2d 341 (1974).

States v. Scott, 331 F. Sup. 233, 248 (D.D.C. 1971), vacated on other grounds, 504 F.2d 194 (D.C. Cir. 1974); see also N.J. Stat. Ann. 2A: § 156A-21 (Cum. Sup. 1983).[20]

We feel the more reasonable rule is that stated by a third line of cases. Numerous courts, both before and after the decision in *Scott v. United States*, have stated that while partial suppression is the proper remedy when minimization is attempted but fails, total suppression is necessary when the violation results from a complete disregard of the minimization requirement. *United States v. Santora*, 600 F.2d 1317, 1320 (9th Cir.), modified, 609 F.2d 433 (9th Cir. 1979); *United States v. Hyde*, 574 F.2d 856, 869 (5th Cir.), reh. and reh. en banc denied, (5th Cir. 1978); *United States v. Turner*, 528 F.2d 143, 156 (9th Cir.), cert. denied sub nom. *Grimes v. United States*, 423 U.S. 996, 96 S. Ct. 426, 46 L. Ed. 2d 371 (1975), and sub nom. *Hackett v. United States*, 429 U.S. 837, 97 S. Ct. 105, 50 L. Ed. 2d 103 (1976); *United States v. Suquet*, 547 F. Sup. 1034, 1039 (N.D. Ill. 1982); *United States v. Webster*, 473 F. Sup. 586, 598 (D. Md. 1979), aff'd in part, rev'd in part on other grounds, 639 F.2d 174 (4th Cir. 1981), aff'd and modified, 669 F.2d 185 (4th Cir. 1982), cert. denied, 456 U.S. 935, 102 S. Ct. 1991, 72 L. Ed. 2d 455 (1982); *United States v. Curreri*, 363 F. Sup. 430, 437 (D. Md. 1973); *United States v. Lanza*, 349 F. Sup. 929, 932 (M.D. Fla. 1972); *United States v. Leta*, 332 F. Sup. 1357, 1360 n.4 (M.D. Pa. 1971); accord, Fishman, Wiretapping and Eavesdropping § 290 (1978). Although the rule was stated as dictum in the above cited cases, the Florida Supreme Court and the New York Court of Appeals have required the total suppression of wiretap evidence in accordance with the rule which we adopt. *Rodriguez v. State*,

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20. The New Jersey wiretap statute provides that any minimization violation must result in the suppression of "the entire contents of all intercepted wire or oral communications . . . ." N.J. Stat. Ann. 2A: § 156 A-21 (Cum. Sup. 1983). See *State v. Catania*, 85 N.J. 418, 426, 427 A.2d 537 (1981).

297 So. 2d 15, 21 (Fla. 1974); *People v. Brenes,* 42 N.Y.2d 41, 49-50, 396 N.Y.S.2d 629, 364 N.E.2d 1322 (1977). Three considerations, essentially, militate for this approach: (1) recognition of the need for an effective deterrent to unlawful conduct of wiretaps, (2) appreciation of the exceptional dangers inherent in overbroad wiretap surveillance, and (3) reluctance to accept as evidence in the courts of this state materials obtained in disregard of a court order.[21]

The difficulty with suppressing only those conversations outside the scope of the wiretap order is that a remedy so limited would remove an incentive to restrict interception to the proper scope of the order. *United States v. Focarile,* supra, 1047; *State v. Catania,* 85 N.J. 418, 426, 427 A.2d 537 (1981); Fishman, "The 'Minimization' Requirement in Electronic Surveillance: Title III, The Fourth Amendment, and the Dread *Scott* Decision," 28 Am. U.L. Rev. 315, 352 (1979); note, "Minimizing Minimization," 59 B.U.L. Rev. 567, 578 n.90 (1979). A court's exclusion of extraneous evidence constitutes a post facto minimization that neither remedies the prior invasion of privacy nor burdens those who conduct surveillance in disregard of the minimization requirement.

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21. A corollary of our holding today is that persons aggrieved by a particular wiretap; see General Statutes § 54-41a(10); have standing to contest the state's failure to minimize its interception of conversations, overheard in the course of the same wiretap, to which the aggrieved person was not a party. Accord *United States v. Scott,* 504 F.2d 194, 197 (D.C. Cir. 1974); *United States v. Suquet,* 547 F. Sup. 1034, 1038-40 (N.D. Ill. 1982); *State v. Catania,* 85 N.J. 418, 425-27, 427 A.2d 537 (1981). Determination of the overall reasonableness of minimization procedures necessitates such an approach. *United States v. Scott,* supra. In the present case, the state does not dispute that the defendants are aggrieved persons, nor does it make any other challenge to the defendants' standing. We express no opinion, therefore, as to whether an aggrieved person would have standing to suppress a conversation to which he was not a party, upon proof that the conversation was illegally intercepted. See *United States v. Scott,* supra, n.5; *United States v. Suquet,* supra.

Furthermore, the purpose of the minimization requirement is to prevent a wiretap from turning into "a general search and wholesale invasion of privacy." *United States v. King,* 335 F. Sup. 523, 544-45 (S.D. Cal. 1971), aff'd in part, rev'd in part on other grounds, 478 F.2d 494 (9th Cir.), cert. denied sub nom. *Light v. United States,* 414 U.S. 846, 94 S. Ct. 111, 38 L. Ed. 2d 94 (1973), cert. denied, 417 U.S. 920, 94 S. Ct. 2628, 41 L. Ed. 2d 226 (1974); see *Andresen v. Maryland,* 427 U.S. 463, 482 n.11, 96 S. Ct. 2737, 49 L. Ed. 2d 627 (1976). The overhearing of telephone conversations, like a search of documents, poses an inherent danger of turning into a general search, due to the difficulty of ascertaining the relevance of the item to be "seized." *Andresen v. Maryland,* supra. Where disregard of a warrant's limitations is flagrant and entire, the otherwise valid warrant may become a general one in which case the "fruits of the search" must be suppressed. *United States v. Heldt,* 668 F.2d 1238, 1259 (D.C. Cir. 1981); see *United States v. Sequet,* 547 F. Sup. 1034, 1039-43 (N.D. Ill. 1982).

Finally, we feel the present approach is necessary to ensure the integrity of the wiretap statute and of the functioning of the judiciary with respect to it. The remedy which the trial court designed and which we adopt is no more exceptional than the circumstances which demanded it. The execution of the wiretap in the present case entirely misconstrued the scope of the order which authorized it, completely disregarded the minimization requirement contained in that warrant, and resulted in the overhearing of hundreds of conversations, incriminating and innocent alike, which could have been excluded had proper minimization occurred. Because of the conjunction of these factors, the remedy of total suppression which the trial court ordered was entirely appropriate.

There is no error.

In this opinion the other judges concurred.

APPENDIX B

No. 11442

No. 11481

STATE OF CONNECTICUT : SUPERIOR COURT

VS. : JUDICIAL DISTRICT OF WATERBURY

ROBERT PARKER, JR. : SEPTEMBER 6, 1974

MEMORANDUM OF DECISION RE MOTIONS TO SUPPRESS

1. STATEMENT OF FACTS

On March 9, 1973, John F. Bianchi, state's attorney for Litchfield County, and Francis M. McDonald, Jr., state's attorney for the Judicial District of Waterbury, executed an application for authority to intercept wire communications pursuant to Connecticut General Statutes § 54-41b et seq. The allegations contained in the application signed by Mr. Bianchi and Mr. McDonald alleged, inter alia, that one Arnold "Tuffy" Albert and others unknown had committed and were continuing to commit the crime of sale of narcotics in violation of § 19-480 of the Connecticut General Statutes. The application sought to intercept the telephone communications of Albert and others unknown. It was further alleged that telephone communications over two telephone numbers, which were both public telephones in the town of Terryville, would constitute material evidence that the offense had been and was being committed, and would aid in the apprehension of the perpetrator of such offense. The purpose of the wire interceptions was to discover the identity of the unknown suppliers and distributors of heroin and to prosecute them as well as Albert.

On March 9, 1973, John Griffin, who identified himself as a lieutenant attached to the Waterbury police department, and serving as head of the vice and intelligence division of that department,

and also acting as head of the Naugatuck Valley regional crime squad, executed an affidavit in which he sets up in said affidavit allegations of a number of sales of "a brown Mexican heroin" by Mr. Albert, to undercover Connecticut law enforcement officers. The allegations of said affidavit were that several purchases had been made by undercover agents from Albert, the purchases resulting in face to face dealing, as well as telephone conversations over the subject telephones between the officers and Albert.

The affidavit of Lieutenant Griffin also alleged that information had been received by an undercover agent that Albert had an individual supplying him with the heroin which was being sold by Albert to the undercover agents.

Information was also disclosed in the affidavit of Mr. Griffin that Albert had told Officer Kelly, a Middlebury undercover agent, that Albert was using the telephone number 589-9920, which said phone was located in the lobby of the Austin House Hotel, for incoming calls with respect to the sale of heroin, and telephone number 589-9878, which is a public phone located outside the said hotel, for outgoing calls relating to narcotics transactions.

The affidavit of Mr. Griffin also contained the allegation that wire interception was required in the investigation "because normal investigative procedures, such as physical surveillance of Albert would be too dangerous to employ and would be impossible to maintain within his present residence, the Austin Hotel, and within the outside public pay telephone, and since according to the said agent, Albert has exhibited considerable wariness in trafficking in heroin, and has not introduced his source of heroin to the undercover agent. Future negotiations to purchase large amounts of heroin would be jeopardized by physical surveillance and efforts by the undercover officers to ascertain the principal supplier of Albert by conversations with Albert, or to have a contact directly made with the supplier by the agents, have been fruitless. From the past experience of the affiant, who has directed such investigations in the past, the middleman is always loath to reveal his

source of drugs for fear of being 'dealt out' or deprived of his commission on the sale of narcotics."

The application as hereinbefore set forth was filed with the wiretap panel, which had been created pursuant to the provisions of the Connecticut General Statutes, and according to Siegbert Kaufmann, the executive secretary of the wiretap panel, the wiretap panel met on said application on March 14, 1973, and adjourned without making a decision with respect to the application.

On March 14, 1973, subsequent to the meeting of the wiretap panel, John Bianchi and Francis M. McDonald filed an amendment to the application, which contained the supplemental affidavit of Mr. Griffin, and three amendments to the application originally filed by Mr. Bianchi and Mr. McDonald. The supplemental affidavit of Lieutenant Griffin set forth that an agent had been with Mr. Albert when Mr. Albert entered a house in Plainville to obtain heroin, and the supplemental affidavit was to the effect that the agent had been unable to observe which house Mr. Albert had entered at that time.

Also appended to the affidavit was a list of officers permitted to act as interceptors or monitors of the wiretap, and the allegation was made in the affidavit filed by Messrs. Bianchi and McDonald to the effect that all were members of the Connecticut state police department "and have had either training with that department or the New York and New Jersey State Police Departments in electronic surveillance." On March 15, 1973, by unanimous vote, the application of Mr. Bianchi and Mr. McDonald was approved without condition by the wiretap panel, resulting in the issuance of order number 73-03 (defendant's exhibit 1D).

The order of the wiretap panel with respect to the interceptions contained the following language "order the interception of the wire communications of Arnold Albert who it found probable cause to believe, had committed or is committing the following offense: violation of Section 19-480a." The order of the panel contained the following language: "5. The panel orders the above

named officers to intercept the telephone communications of Arnold Albert residing/having his place of business at: Austin Hotel, Plymouth, Conn., from 5 p.m. on 15 March 1973 to 5 p.m. on 25 March 1973, inclusive, during twenty four hours of each day." The report of the panel recited that the name of the person, if known, whose communications are to be intercepted, was Arnold Albert.

The order contained the following language: "7. This order/extension shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception in accordance with the provisions of Chapter 959a, and shall terminate upon attainment of the authorized objective."

On March 22, 1973, the same applicants, that is, Francis M. McDonald, state's attorney for the Judicial District of Waterbury, and John F. Bianchi, state's attorney for Litchfield County, filed an application with the wiretap panel, requesting an extension of order number 73-03, requesting that the interceptions be extended for a period of ten calendar days commencing at the termination of the original order. Attached to the application was the affidavit of one Sergeant Lester Forst, as well as the logs of interceptions already made during the period of the original order.

The extension application sought to extend the order authorizing the interception of communications of Albert and others unknown. (Defendant's exhibit 2A, paragraph two). The request for extension was received and granted on March 23, 1973. (Defendant's exhibit 2B).

The allegations in the affidavits of Messrs. Bianchi and McDonald with respect to the necessity of intercepting a communication over a public facility was as follows: "18. A special need exists to intercept wire communications from public facilities since Albert is making extensive use of such facility at or near the Austin Hotel where he is now staying."

Also contained in the application by the state's attorneys was the following paragraph with respect to the necessity of wire interceptions: "4. Other normal investigative procedures with respect to the sale of narcotics had been tried and have failed and reasonably appeared to be unlikely to succeed if tried, and are too dangerous to employ, such as physical surveillance and direct undercover contact with the suppliers of heroin to Albert."

The affidavit of Sergeant Lester Forst was also appended to the application for extension. In paragraph six of the affidavit of Sergeant Forst he reveals that a member of the Naugatuck Valley regional narcotics squad had met one LaFleur and bought heroin from LaFleur, who had been accompanied by Kathleen Paradis. In paragraph seven of that affidavit that undercover officer observed that from conversation with that LaFleur and his associate Albert, neither are suppliers but only runners of the smuggled brown Mexican heroin being sold in the Terryville area.

On March 23, 1973, the wiretap panel unanimously voted to extend order number 73-03, the extension to commence on 25 March 1973 at 5 p.m. and to conclude on 4 April 1973 at 5 p.m. during twenty four hours of each day.

The stated purpose of order 73-03 was "to prosecute Albert and others for selling narcotics, and through interception beyond this objective to ascertain additional information from this heavy and continuing operation implicating suppliers and distributors."

The order of the wiretap panel remained the same as hereinbefore set forth, that is, to intercept telephone communications of Arnold Albert, and to carry out the order in such a way as to minimize the interception of communications not otherwise subject to interceptions.

As with the original order, a list of individuals authorized to intercept was appended thereto. The allegation was made that all of the men listed in the exhibit were members of the Connecticut state police department and had had either training with that de-

partment or with the New York or New Jersey state police departments in electronic surveillance.

On March 28, 1973, John D. LaBelle, state's attorney for Hartford County, filed an application for authority to intercept wire communications pursuant to statute, setting forth in his application that Daniel A. Wrisley [also known as Daniel A. Risley, and hereinafter referred to as Daniel A. Wrisley], Arnold "Tuffy" Albert, Alan LaFleur, Kathleen Paradis, Frank and Skippy whose last names and addresses are unknown, are committing the crime of the sale of narcotics. The application sought to intercept the communications of Wrisley and others unknown. Mr. LaBelle further alleges that telephone communications were made over telephone 747-5361 in the town of Plainville. Mr. LaBelle also alleges that other normal investigative procedures were tried and had failed, and reasonably appeared to be unlikely to succeed if tried. Also appended to the application was a statement by Mr. LaBelle that the allegations of fact contained in the application are not based upon his personal knowledge, but are based on information and belief of the matters which were set forth in an affidavit attached thereto by Sergeant Lester Forst, as well as by the information set forth in the application previously filed by Messrs. McDonald and Bianchi which resulted in order number 73-03.

On March 28, 1973, the wiretap panel granted the application of Mr. LaBelle, and issued order number 73-04 which provided, inter alia, that the officers were permitted to intercept the telephone communications of subscriber Daniel A. Wrisley residing/having his place of business at 17 Dewey Place, Plainville, Connecticut, from 6 p.m. on 28 March to 6 p.m. on 7 April 1973.

The stated purpose of order 73-04 was "to prosecute Wrisley and others for sale of narcotics and to conduct further investigations into the trafficking in narcotics by said persons."

The order of the wiretap panel also contained a list of the individuals permitted to make interception, and also provided, as had the previous orders, that the order was to be executed as soon as

practicable, and was to be conducted in such a way as to minimize the interception of communications not otherwise subject to interception in accordance with the provisions of the statute.

On March 29, 1973, after the tap authorized by the wiretap panel had been instituted, the wiretap panel issued an amendment to order number 73-04, in which it ordered that its original order number 73-04 be amended to terminate upon attainment of the authorized objective or in any event at midnight at 2400 hours on 6 April 1973 rather than at 6 p.m. on 7 April 1973.

On April 6, 1973, John D. LaBelle, state's attorney for Hartford County, filed an application with the wiretap panel seeking an extension of order number 73-04, for an additional period of ten days, or until such time as the objective or needed information is first obtained. An affidavit in support of said application, executed by Sergeant Lester J. Forst on April 5, 1973, was appended thereto.

On April 6, 1973, the wiretap panel, by unanimous vote, extended order number 73-04 from April 7, 1973, to April 16, 1973, inclusive, during twenty four hours of each day. The interceptions under order 73-04 were concluded on April 15, 1973, at 1:30 a.m.

The order of the panel authorized the officers named in the order of interception to "intercept telephone communications of (subscriber): Daniel A. Wrisley residing/having his place of business at: 17 Dewey Place, Plainville, Connecticut, from 7 April 1973 to 16 April 1973, inclusive, during twenty four hours of each day."

The order of the wiretap panel also contained an order with respect to the issue of minimizing the interceptions of communications.

Upon completion of the interceptions as permitted by the wiretap panel, the tapes which resulted from the interceptions were delivered to the executive secretary of the wiretap panel. Order number 73-03 expired on March 25, 1973, and the extension

thereof expired on April 4, 1973. According to Siegbert Kaufmann, executive secretary of the wiretap panel, the forty-four tapes which resulted from number 73-03 and the extension thereof, were received by him on April 25, 1973, some twenty-one days subsequent to the expiration of the extension, and approximately thirty days subsequent to the expiration of the order of the wiretap panel as originally constituted.

With respect to number 73-04, the original order expired, according to the amendment made by the wiretap panel, at midnight on April 6, 1973, and the extension thereof expired at midnight on April 16, 1973. According to the testimony of Mr. Kaufmann, fifteen tapes were delivered to him on April 13, 1973, which is some seven days subsequent to the expiration of the original order, and six tapes were delivered to him on April 24, 1973, some eight days after the expiration of the order of the extension as made by the wiretap panel.

Before those tapes were given to the panel clerk, the state police were required to make copies of them for discovery use by defense counsel, since the judicial department had no facilities to make copies.

Robert E. Parker, Jr., "also known as Skip," was arrested and charged by virtue of two bench warrants issued by the Superior Court for the Judicial District of Waterbury with one count alleging conspiracy to distribute, sell, dispense, compound, transport with the intent to sell and dispense, heroin, a narcotic substance, in violation of the statute, in that case made and provided, and in a second information, with possession of heroin and sale of heroin.

The conspiracy case affidavit arises out of the fruits of the electronic surveillance. The second information does not and no information gained by the electronic surveillance was given to the undercover agents purchasing the heroin from Parker.

In both cases, by application dated May 15, 1973, the defendant Robert Parker, Jr., filed with the panel of judges pursuant to

the provisions of § 54-41k of the Connecticut General Statutes, applications for inspection and production of intercepted communications, applications and orders. The defendant also sought an inventory of all communications intercepted, as well as the communications intercepted or recordings thereof, which was denied by the panel. Logs used for obtaining the extension of order number 73-03 were produced, however, on the theory that they formed a portion of the application for the extension of the order. No other logs were supplied to the defendant, despite his request for production.

II. CONSTITUTIONALITY OF STATUTE

The defendant has attacked the constitutionality of the statute authorizing the interception. His primary argument is that the statute violates the fourth amendment restrictions against unreasonable searches and seizures.

The motions before the court challenge the validity of chapter 959a of the Connecticut General Statutes which establishes the procedure for the interception of wire and oral communications.

The fourth amendment to the Constitution of the United States dictates that people have a right ". . . to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, . . ." and that this right ". . . shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The amendment does not bar all searches and seizures but only those that are unreasonable. The amendment outlawed the "general warrant," and its basic purpose ". . . is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *Camara v. Municipal Court*, 387 U. S. 523, 528, 87 S. Ct. 1727, 18 L. Ed 2d 930 (1967).

Thus, the issue is whether chapter 959a of the Connecticut General Statutes permits unreasonable searches and seizures in violation of the fourth amendment.

The United States Supreme Court in *Berger v. New York,* 388 U.S. 41, 87 S. Ct. 1873, 18 L. Ed. 2d 1040 (1967), held that the New York permissive eavesdrop statute, N. Y. Code Crim. Proc. § 813-a, to be unconstitutionally broad in its sweep ". . . resulting in a trespassory intrusion into a constitutionally protected area . . ." and, thus, violative of the fourth and fourteenth amendments.

In the *Berger case,* the grounds upon which the statute was held unconstitutional were as follows:

(1) The statute failed to require a showing of probable cause that a particular offense had been or was being committed.

(2) The statute failed to require that a description be provided of the particular conversations or communications to be intercepted.

(3) The statute failed to require particularity as to the duration of the intrusion. The court held that the intrusion should not be so long as to be ". . . the equivalent of a series of intrusions, searches, and seizures pursuant to a single showing of probable cause." *Id.* 59.

(4) The statute failed to require particularity as to when a surveillance should be ended after the particular conversation sought was intercepted. As to this, the court held that discretion should not be vested in the executing officer.

(5) The statute failed to provide for either notice to the persons whose conversations were to be intercepted or a showing of special facts or exigent circumstances necessitating the withholding of notice. *Id.* 58-60.

In *Katz v. United States,* 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967), where the eavesdropping officers had exercised great restraint and had limited their intrusion, the Court

restated the requirements of *Berger,* but with special emphasis on the necessity for a showing of probable cause *before an independent judicial officer* who also would establish the precise limits to be observed in executing the eavesdropping order.

Chapter 959a represents an attempt by the legislature, inter alia, to establish a limited system of electronic surveillance within the framework of the fourth amendment and the guidelines of *Berger, Katz,* and other Supreme Court decisions for use by law enforcement officers in fighting crime. An examination of the relevant sections of chapter 959a shows that they provide for particularity in the application and order, judicial supervision, and other protective procedures whose absence caused the Court to condemn the electronic surveillance in *Berger* and *Katz.*

Judicial supervision, emphasized in *Katz,* is guaranteed. An application for order authorizing interception must be made to a panel of judges, § 54-41b, who may require additional testimony or documentary evidence in support of fact in the application as the panel of judges may require, § 54-41c(12), and who must make specific findings of probable cause before authorizing the interception, § 54-41d.

There must be particularity in the application and order. An application must contain "a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his reasonable belief that the wire communication of a particularly described person will constitute evidence of a crime enumerated in section 54-41b that has been or is being committed or that such communication will materially aid in the apprehension of the perpetrator of such crime and that an order should be issued, ..." Sec. 54-41c(5). Such statement must include details of the particular offense that has been or is being committed, § 54-41c(5A), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, § 54-41c(5B), a particular description of the type of communications sought to be intercepted, § 54-41c(5C), the identity of the person, if known, who has committed or is

committing the offense and whose communications are to be intercepted, § 54-41c(5D). Section 54-41e likewise provides that the order shall specify, among other things, all of the above details. Section 54-41c(5G) requires the hours of the day or night during which wire communication may be reasonably expected to occur, and § 54-41c(7) requires the application to specify the period of time for which the interception is required to be maintained.

Section 54-41f provides that any order entered in accordance with the provisions of chapter 959a may be executed pursuant to its terms only by the investigative or law enforcement officers expressly authorized therein. The order may be executed according to its terms *only* during the hours specified therein, and for the period authorized or part thereof. No order may authorize the inerception [*sic*] of any wire communication for any period longer than is necessary to achieve the objective of the authorization, *nor in any event longer than ten days.*

Section 54-41g permits no more than three extensions of an order and requires a new showing of probable cause for each extension, which period of any extension shall be in no event longer than ten days, and said application for an extension shall be made in accordance with the provisions of § 54-41c, which shall, in addition, contain the results of the interceptions conducted thus far, and findings by the issuing panel as required by the provisions of § 54-41d.

Section 54-41i requires the recording of all intercepted communications and the presentation of them under the direction of the panel of judges.

Section 54-41k provides for notice by the panel to the persons named in the order within a reasonable time after the termination of an order or extension thereof but not later than ninety days thereafter.

An examination of the relevant sections of chapter 959a shows that they provide for particularity in the application and order, judicial supervision including limits on the duration of the intru-

sion, and other protective procedures whose absence caused the Court to condemn the electronic surveillance in *Berger* and *Katz*. Therefore, it is the opinion of this court that chapter 959a is constitutional on its face.

Accordingly, the motions of the defendant to suppress based upon the alleged unconstitutionality of chapter 959a are denied.

III. THE FAILURE OF THE INTERCEPTORS TO RETURN RECORDINGS TO THE PANEL ISSUING THE ORDER IMMEDIATELY UPON EXPIRATION OF THE PERIOD OF THE ORDER

The next issue raised by the defendant is the failure of the interceptors to return recordings to the panel issuing the order immediately upon expiration of the period of the order.

Connecticut General Statutes § 54-41i provides, inter alia: "Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the panel issuing such order and sealed under its directions and custody of such recordings shall be wherever the panel so directs."

The evidence disclosed that the forty-four reels of tape recordings of the interceptions under order number 73-03, which covered the period ending April 4, 1973, were filed with the panel clerk on April 25, 1973. The first fifteen reels of the interceptions under order number 73-04 were filed on April 13, 1973, and the remaining six reels on April 24, 1973. The interceptions under 73-04 ended April 14, 1973. Before these reels were given to the clerk for sealing, copies necessary for the use of the applicant and for use for discovery by defense counsel were made by the state police since the judicial department has no facilities to make such copies.

It is the claim of the state that at this time the state police were very busy making these required copies and, therefore, this is a satisfactory explanation for the delay in filing the tapes.

It is the defendant's contention that the time lapse between the end of the intercepts and the receipt of the reels *per se* calls for suppression of the interceptions. However, the defendant has shown no prejudice and he has presented no evidence that the tapes were altered.

In *United States v. Poeta,* 455 F.2d 117, 122 (2d Cir. 1972), the Court said:

> "The failure immediately to present the tapes to the issuing justice does not require their suppression. Section 2518(8)(a) [of Title 18, U.S. Code] provides that in the absence of a seal the tapes might be used in evidence if 'a satisfactory explanation for the absence' is made. *A fortiori,* where, as here, the tapes are sealed, a satisfactory explanation for the delay will allow their use in evidence."

It should be noted that Connecticut law also provides that a seal ". . . or a satisfactory explanation for the absence thereof, . . ." is required under § 54-41i, General Statutes.

The *Poeta* holding is in accord with the numerous cases interpreting the suppression provisions of the Federal Wiretap Law, Title 18, U.S.C.A. 2518(10)(a) and § 54-41m, General Statutes, its Connecticut counterpart. In those cases, it has been held that the failure to meet some condition subsequent does not invalidate *ab initio* the interception and give rise to suppression of the wire interceptions. *United States v. Cafero,* 473 F.2d 489 (3d Cir. 1973); *United States v. Iannelli,* 339 F. Supp. 171 (D.C. Pa. 1972), affirmed, 477 F.2d 999 (3d Cir. 1973).

For the above stated reasons, the defendant's motions to suppress on the grounds of the failure of the interceptors to return recordings to the panel issuing the order immediately upon expiration of the period of the order are denied.

IV. MINIMIZATION

The court will now consider the actual execution of the intercept, by far the most important issue.

The question is whether the wiretap was in fact conducted in such a way as to minimize the interception of communications not otherwise subject to interception as required by § 54-41e and the judicial order issued in pursuant thereto.

Section 54-41e provides, in pertinent part, that every order and extension thereof shall contain a provision that the authorization to intercept ". . . shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception in accordance with the provisions of this chapter [959a] . . . ."

> "The object of minimization, as set forth in statute relating to procedure for interception of wire or oral communications, is to prevent a wiretap from turning into an unconstitutional general search and wholesale invasion of privacy; justifying blanket surveillance on the ground that something relevant might turn up at any moment would render the requirement of minimization nugatory and eliminate the right of privacy. U.S.C.A. Const. Amend. 4; 18 U.S.C.A. § 2518(5)." *United States v. King*, 335 F. Supp. 523 (S.D. Cal. 1971).

Assessment of the minimization question necessarily ultimately depends upon the facts and circumstances of each case.

The court commences with the observation that the mere fact that every conversation is monitored does not necessarily render the surveillance violative of the minimization requirement of the statute. See *United States v. Cox*, 462 F. 2d 1293, 1301 (8th Cir. 1972); *United States v. Leta*, 332 F. Supp. 1357, 1360, n.4 (M. D. Pa. 1971). It is also obvious that no electronic surveillance can be so conducted that innocent conversations can be totally eliminated.

The verb "minimize" is defined in Webster's New Third International Dictionary as meaning, "to reduce to the smallest possible number, degree, or extent . . . ."

From the testimony elicited from the witnesses, it was quite apparent that the Connecticut state police, either in their so-called "on the job training," or by specific instructions at the time of the setting up of the plant, were never instructed by anyone in authority with respect to the requirement of the statute, and of the orders of the wiretap panel, with respect to minimization. As a matter of fact, it was testified to by most of the witnesses, that no instructions were ever given them with respect to minimization. When asked what they understood minimization to mean, the witnesses answered that they were not to intercept calls originating as to attorneys, physicians, or clergymen.

With respect to the operation of the equipment, those officers who were familiar with it, testified that each of the receivers were equipped with items of equipment which permitted the tape recorder to be shut down, and also permitted the loud speaking device to be shut off so that the calls were neither intercepted by tape, nor overheard by the monitors.

Each of the witnesses with the exception of one witness testified that throughout the entire time that they monitored the equipment in both order number 73-03 and order number 73-04, that they never shut off the equipment, nor did they ever shut off the loud speaking device which permitted them to overhear each and every conversation by the automatically activated equipment.

From the testimony of the state troopers, it was quite apparent that they had never been instructed with respect to the obligation which was imposed upon them by the mandate of the statute and by the order of the wiretap panel that they were to minimize the interception of communications that are not otherwise subject to interception.

The state argues that in the investigation of an ongoing narcotics conspiracy such as is involved in this case, it is necessary to

intercept and monitor from beginning to end all communications passing through the tapped telephone because narcotic related transactions are conducted through code words that are peculiar to such transactions and conversations that may sound innocuous in the beginning may end up on a narcotic related subject employing such code words.

The court recognizes the difficulty that monitoring agents may have in manning wiretaps in cases of this kind. Nevertheless, that difficulty cannot authorize indiscriminate listening or permit such agents to totally disregard an order of the authorizing panel of judges to conduct the interception ". . . in such a way as to minimize the interception of communications not otherwise subject to interception . . . ."

Further, it appears to the court that despite the practical difficulties, the legislature intended minimization under § 54-41e to involve something more than the mere provision for the limited attorney-client, doctor-patient and clergy privilege. A communication once seized can never truly be given back as can a physical object. The right of privacy protected by the fourth amendment has been more invaded where a conversation which can never be returned has been seized than where a physical object which can be returned has been seized.

It is the opinion of this court that the surveilling agents failed to comply with the mandate of the order and the statute, i.e., ". . . to minimize the interception of communications not otherwise subject to interception . . .," and, therefore, the motions to suppress as to this issue should be and are granted.

V. CONCLUSION

In view of the decision reached on the minimization issue, the court does not find it necessary to discuss the remaining issues.

In summary, the motions to suppress based upon the alleged unconstitutionality of chapter 959a of the Connecticut General

Statutes and upon the failure of the interceptors to return recordings to the panel issuing the order immediately upon expiration of the period of the order are denied, and the motions to suppress based upon the failure to minimize the interception of communications not otherwise subject to interception are granted.

McGrath

_____, J.

Filed September 6, 1974.

APPENDIX C

No. 8359

STATE OF CONNECTICUT	: SUPREME COURT
VS.	: STATE OF CONNECTICUT
NEIL J. THOMPSON	: SEPTEMBER 15, 1983

MOTION TO REARGUE

Pursuant to Section 3111 of the Practice Book, the State-Appellant in the above-captioned case respectfully moves this court for permission to reargue the appeal. The court's opinion in this case appears at 191 Conn. 360 (September 6, 1983).

THE STATE OF CONNECTICUT

Francis M. McDonald

BY S/_____

Francis M. McDonald
State's Attorney
Judicial District of Waterbury

Service certified:

Louis S. Avitabile, Esq.
182 Grand Street
Waterbury, CT 06702

Francis M. McDonald

BY S/_____

Francis M. McDonald

No. 8359

STATE OF CONNECTICUT	: SUPREME COURT
v.	: STATE OF CONNECTICUT
NEIL J. THOMPSON	: SEPTEMBER 21, 1983

ORDER

THE MOTION OF THE STATE OF CONNECTICUT TO REARGUE,

HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED DENIED.

BY THE COURT,

FRANCIS J. DRUMM, JR.

CHIEF CLERK

M. T. Angers

By_____

Assistant Clerk-Appellate

Notice to:

Francis McDonald, S.A.
Bradford Ward, A.S.A.
Walter Scanlon, A.S.A.
Louis Avitabile
Clerk, Waterbury J.D.
9/22/83

No. 8360

STATE OF CONNECTICUT	: SUPREME COURT
VS.	: STATE OF CONNECTICUT
ROBERT E. PARKER, JR.	: SEPTEMBER 15, 1983

MOTION TO REARGUE

Pursuant to Section 3111 of the Practice Book, the State-Appellant in the above-captioned case respectfully moves this court for permission to reargue the appeal. The court's opinion in this case appears at 191 Conn. 360 (September 6, 1983).

THE STATE OF CONNECTICUT

Francis M. McDonald

BY S/_____

Francis M. McDonald
State's Attorney
Judicial District of Waterbury

Service certified:

Maxwell Heiman, Esq.
43 Bellevue Avenue
P.O. Box 1557
Bristol, CT 06010

Francis M. McDonald

BY S/_____

Francis M. McDonald

No. 8360

STATE OF CONNECTICUT	: SUPREME COURT
v.	: STATE OF CONNECTICUT
ROBERT E. PARKER, JR.	: SEPTEMBER 21, 1983

ORDER

THE MOTION OF THE STATE OF CONNECTICUT TO REARGUE,

HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED DENIED.

BY THE COURT,

FRANCIS J. DRUMM, JR.

CHIEF CLERK

M. T. Angers

By_____

Assistant Clerk-Appellate

Notice to:

Francis McDonald, S.A.
Bradford Ward, A.S.A.
Maxwell Heiman
Clerk, Waterbury J.D.
9/22/83

No. 8362

STATE OF CONNECTICUT	: SUPREME COURT
VS.	: STATE OF CONNECTICUT
JAMES C. BLACK	: SEPTEMBER 15, 1983

MOTION TO REARGUE

Pursuant to Section 3111 of the Practice Book, the State-Appellant in the above-captioned case respectfully moves this court for permission to reargue the appeal. The court's opinion in this case appears at 191 Conn. 360 (September 6, 1983).

THE STATE OF CONNECTICUT

Francis M. McDonald

BY S/_____

Francis M. McDonald
State's Attorney
Judicial District of Waterbury

Service certified:

John Jessep, Esq.
55 Chapel Street
P.O. Box 1698
Bridgeport, CT 06604

Francis M. McDonald

BY S/_____

Francis M. McDonald

No. 8362

STATE OF CONNECTICUT	: SUPREME COURT
v.	: STATE OF CONNECTICUT
JAMES C. BLACK	: SEPTEMBER 21, 1983

ORDER

THE MOTION OF THE STATE OF CONNECTICUT TO REARGUE,

HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED DENIED.

BY THE COURT,

FRANCIS J. DRUMM, JR.

CHIEF CLERK

M. T. Angers

By_____

Assistant Clerk-Appellate

Notice to:

Francis McDonald, S.A.
Bradford Ward, A.S.A.
Koskoff, Koskoff & Bieder
Clerk, Waterbury J.D.
9/22/83

No. 8363

STATE OF CONNECTICUT	: SUPREME COURT
VS.	: STATE OF CONNECTICUT
FRANK P. LEPORE	: SEPTEMBER 15, 1983

MOTION TO REARGUE

Pursuant to Section 3111 of the Practice Book, the State-Appellant in the above-captioned case respectfully moves this court for permission to reargue the appeal. The court's opinion in this case appears at 191 Conn. 360 (September 6, 1983).

THE STATE OF CONNECTICUT

Francis M. McDonald

BY S/_____

Francis M. McDonald
State's Attorney
Judicial District of Waterbury

Service certified:

Robert M. Richards, Esq.
44 Avonwood Road
Avon, CT 06001

Francis M. McDonald

BY S/_____

Francis M. McDonald

No. 8363

STATE OF CONNECTICUT	: SUPREME COURT
v.	: STATE OF CONNECTICUT
FRANK LEPORE	: SEPTEMBER 21, 1983

ORDER

THE MOTION OF THE STATE OF CONNECTICUT TO REARGUE,

HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED DENIED.

BY THE COURT,

FRANCIS J. DRUMM, JR.

CHIEF CLERK

M. T. Angers

By_____

Assistant Clerk-Appellate

Notice to:

Francis McDonald, S.A.
Bradford Ward, A.S.A.
Robert Richards
Clerk, Waterbury J.D.
9/22/83

APPENDIX D

CONFIDENTIAL

(When entries have been made on this form)

APPLICATION FOR AUTHORITY TO INTERCEPT WIRE COMMUNICATIONS

(This form will be prepared by (1) State's Attorneys, applying for authority to wiretap, and (2) the panel of Superior Court judges, acting on the application. It will be prepared in duplicate, and, per Sec. 54-41n, (Gen. Stat.) submitted by the panel to the Chief Court Administrator within 30 days of (a) the expiration of an order or (b) an extension thereof which was approved by the panel or (c) the date an application for an order or extension was denied.)

PART I - TO BE COMPLETED BY STATE'S ATTORNEY

1. I, John D. Labelle, Esq., State's Attorney for Hartford
(Name of Applicant)
County, under the authority granted in Gen. Stat. Sec. 54-41b and pursuant to Sec. 54-41c request permission to intercept the wire communications of:

2. Daniel A. Wrisley, a/k/a Daniel A. Risley and others unknown
(Identity of person, if known)
of Plainville, Connecticut who has committed or is
(Address)
committing or is believed to be able to provide evidence pertaining to the following offense(s) which are listed in Sec. 54-41b and which provide the basis of this application:

3. 19-480 (a) Sale of Narcotics
(Stat. Sec.) (Brief Description of Alleged Offenses - ex: Gambling)

4. The facts and circumstances giving the evidence of the alleged offenses were initially discerned on March ~~15~~ 22, 1973 (Date) at in the evening hours (Time)

(Note: Per Sec. 54-41c(7) date must be not more than 15 days next preceding the date of this application.)

5. These facts are as follows: Refer to the attached affidavit of Sgt. Lester Forst which is made a part hereof and attached as Exhibit "A". There is also incorporated by reference the applications and affidavits submitted to this panel for an order of interception and an extension of said order designated as 73-03. (See sheet attached)

(~~Give full and complete statement of the~~ evidential facts and cite source. If informant, give basis of his knowledge or belief, and estimate of his reliability. Supplementary sheets may be attached.)

The allegations of fact in this application are not based on the personal knowledge of the applicant, but based on information and belief from the matters set forth in the aforementioned affidavits and application.

7. The intercepted wire communication will constitute material evidence that pursuant to Sec. 54-41c (9) can assist in the apprehension, prosecution, and/or conviction of the person named in par. 2 above for the following reason(s):

Wrisley, a/k/a

It is anticipated that Risley and his associates in heroin will discuss the sale of heroin in said communications, which conversations will be evidence themselves and lead to the issuance of arrest and search warrants.

8. The content of intercepted wire communications, or evidence derived therefrom, will be put in the following use(s):

CONFIDENTIAL

(When entries have been made on this form)

The same will be used as evidence in criminal prosecutions of Risley and others for the sale of narcotics, and to conduct further investigation into the trafficking in narcotics.

9. Pursuant to Sec. 54-41c (8) following is a list of pervious wiretap applications or authorizations bearing the name of the person(s) listed in par. 2 or related to this case:

Application No. & Date	Auth'zn Number	Name	Pertinent Facts	Panel Action
		NONE		

CHECK BOX IF PERTINENT:

- [X] No previous taps, to the best of my knowledge.
- [X] Name checked against State Police files.
- [X] Name checked with U.S. Attorney and/or FBI.

10. I request permission to intercept wire communications made from/to the following telephone numbers which are believed to be used by the person(s) listed in par. 2:

(Phone Number)	(Type of Premises in which located - ex: Apt., office, etc.)
747-5361	Daniel A. Wrisley, a/k/a Daniel A. Risley, 17 Dewey Pl., Plainville, Conn.

Permission to intercept is sought for the period from 10 days from date of order 24 hours a day to _____ during the hours from _____ to _____, or until the authorized objective or needed information is first obtained. If interceptions beyond the objective are needed, give reason(s):

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(When entries have been made on this form)

Due to continuing and heavy nature of heroin, trafficking by Risley and his associates such is required.

11. In addition to the authority to wiretap, pursuant to Sec. 3(10) of PA 68, I also request authority to (CHECK PROPER BOX)

☐ make secret entry into the premises of the person(s) named in this application in order to install an intercepting device which is not otherwise practicable.

☒ install a pen register or similar device to tract telephone numbers called within the exchange.

12. I request that the following parties (ex: SNETCO, landlord, etc.,) be required to furnish the following assistance:

SNET Co. to supply technical information required to locate terminals and wires of telephone in application.

13. This request was initiated by: Trooper John F. Petrowski,
(Rank & Name of Official, and

Connecticut State Police Department.
Affiliation (ex: State or local police)

14. Information obtained by intercept may be disclosed to:

State's Attorneys Bianchi, McDonald, LaBelle, Markle, State Police Commissioner Fuessenich, Lieut. Ragazzi,
(Rank, Name, affiliation and Qualifications of investigative or law

et al, as on attached list marked Exhibits "B" and made a part hereof.
enforcement officer.)

15. The following investigative or law enforcement officers, on the basis of their specialized training or experience and meeting the requirements set forth by Sec. 54-41b and 54-41c (2) will be making the interceptions:

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(When entries have been made on this form)

See attached list Exhibit "C", made a part hereof, all of whom are members of the Connecticut State Police Department, and have had either training with that department or the New York or New Jersey State Police Department in electronic surveillance.

(Rank, Name, Agency - List Qualifications on separate sheet if necessary)

16. I certify that, for the reasons given below and pursuant to Sec. 54-41c (6).

a. to the best of my knowledge, other normal investigative procedures with respect to the offense(s) have been tried and have failed, are not promising, or are deemed to be dangerous to employ, and as is set forth in more particularity in paragraphs 26 and 27 of the attached Exhibit "A".

b. this application does not involve privileged persons or facilities, as enumerated in Sec. 54-41h and if privileged wire communications are intercepted they will not lose their privileged character, and

c. the equipment to be used protects the recordings from editing or alterations.

17. Following is a list of items attached to this application:

Exhibit "A", Exhibit "B", Exhibit "C".

(ex: Affidavits)

Date of Application

Signature & Title of Person Making Application and Affirming the Above Information.

18. Wherefore the applicants request the issuing panel by unanimous vote, to enter an ex parte order authorizing the interception of wire communications within the State of Connecticut and make the following finding that on the basis of the facts submitted by the applicants that there is probable cause to believe that:

    1. Daniel A. Risley of Plainville and Burlington, Arnold "Tuffy" Albert of Terryville, Allen LaFleur of parts unknown, Kathleen Paradis, of parts unknown, "Frank", last name and address unknown, "Skippy" last name and address unknown have committed and are committing the crime of sale of narcotics in violation of Section 19-480 of the General Statutes.

    2. Telephone communications over telephones 747-5361 in the Town of Plainville, Connecticut, will constitute material evidence that the offense of sale of narcotics, in violation of 19-480 of the General Statutes, has been and is being committed and will materially aid in the apprehension of the perpetrator of such offense.

    3. Such communications are not otherwise privileged.

    4. Other normal investigative procedures with respect to the sale of narcotics have been tried and have failed and reasonably appear to be unlikely to succeed if tried, and are too dangerous to employ, such as physical surveillance and direct undercover contact with the suppliers of heroin to Albert and Wrisley.

    5. The telephone facilities and places of such facilities are not those described in Section 54-41 (h), General Statutes.

    6. The investigative or law enforcement officers to be authorized to intercept the wire communications are qualified by training and experience to execute the interception sought.

7. Not more than thirty-four orders authorizing interception have been previously issued by all panels in the calendar year 1973.

The applicant further requests that such order continue until
Wrisley's *aka Risley's JDL*
the objective of the interception, the disclosure of Albert's,/ and LaFleur's source of heroin and the disclosure of the nature
Albert's *aka Wrisley's JDL*
and extent of LaFleur's, /Risley's, / and others heroin trafficking in the area, is attained, or for ten days next succeeding the date of issuance of the order, whichever occurs first.

Dated at Hartford, Connecticut, this 28th day of March, 1973.

John D. LaBelle

John D. LaBelle, State's Attorney
for Hartford County

STATE OF CONNECTICUT Hartford

ss

COUNTY OF HARTFORD

The foregoing instrument was signed, sworn to and acknowledged before me this 28th day of March, 1973 by John D. Labelle.

Irene L. Kagan

Notary Public

My Commission Expires Mar. 31, 1974

EXHIBIT A.

In the matter of the interception)
of wire communications of an in-)
dividual known as Daniel A. Wrisley)
a/k/a Daniel A. Risley
and other unknown persons engaging)
in a narcotic selling enterprise)
from telephone facility number)
747-5361, listed to Daniel A. Wrisley)
a/k/a Daniel A. Wrisley
17 Dewey Place, Plainville, Conn-)
ecticut, 2nd floor.

STATE OF CONNECTICUT

SS HARTFORD, CONNECTICUT

COUNTY OF HARTFORD

Sgt. Lester Forst, being duly sworn according to law, deposes and says:

1. Application is hereby made for an order authorizing the interception of wire communications as hereinafter specified.

2. The affiant, Sgt. Lester Forst, is a member of the Connecticut State Police Department. In such capacity, he is empowered to conduct investigations of and make arrests for the offense of Sale of Narcotics in violation of PA 278 February Session, 1972, Section 24 (19-480A) of the General Statutes. He is currently responsible for the investigation detailed hereinafter involving the foregoing offense in aid of which investigation this application is made.

3. The interception will be made by means of electronic equipment installed and maintained by members of the Criminal Intelligence Division of the Connecticut State Police, each of

whom has undergone at least two weeks of specialized training in the use of said electronic equipment and the techniques required for its proper installation. The monitoring of said communications will be done by other members of the Connecticut State Police Department who are responsible with me for this investigation which has given rise to this application and who have been instructed in the procedures required by the "Wiretapping and Electronic Surveillance Act of 1971", for the control of such an installation and the preservation of information obtained thereby, and have each participated in investigations of offenses of the type described herein.

4. This affidavit of application in its present form, was submitted to State's Attorney John D. LaBelle, Hartford County at Hartford, Connecticut, who has attached his written authorization and application hereto.

5. Our investigation has revealed that the individuals committing the offense specified herein and whose communication is to be intercepted is Daniel A. Wrisley and other unknown persons
a/k/a Daniel A. Risley
engaging in a narcotic selling enterprise.

6. The type of communications to be intercepted are telephonic. The wire communication facility involved is telephone number 747-5361 and which is the number of the telephone listed to Daniel A. Wrisley, 17 Dewey Place, Plainville,
a/k/a Daniel A. Risley
Connecticut. The telephone is located within the premises and is accessible to the individuals named herein. It will be necessary before commencing interception to obtain technical information from the appropriate common carrier concerning said facility.

7. We know of no previous application made to any court for authorization to intercept a wire communication involving any of the same facilities, places or persons specified in this application.

8. The interception is required to be maintained not longer than ten calendar days and during the hours between 12:01 A.M. to 12:00 Midnight. Conversations regarding the Sale of Narcotics are expected to be monitored.

9. The contents of the intercepted wire communication and evidence derived therefrom will be utilized in the arrest and prosecution of Daniel A. Wrisley and other unknown persons
a/k/a Daniel A. Risley
and to further investigative process pertaining to the crim-
in narcotics
inal activities / of the above mentioned persons.

10. The facts upon which we rely in support of this application are as follows.

11. I, Sgt. Lester Forst, have been a member of the Connecticut State Police Department for more than ten (10) years. I have for the past one month been assigned to the Narcotic Squad of the Detective Division and have participated in numerous narcotic investigations and arrests. I have received specialized training and have graduated from the Bureau of Narcotics and Dangerous Drugs Training School, and the Connecticut State Police. I have while attached to the Narcotic Squad, interviewed informants, undercover investigators and defendants, all of whom have personally participated in or witnessed narcotic selling operations. I have also conducted surveillances of locations where narcotics are sold and stored. From this experience I am familiar with methods and equipment used by narcotics sellers in Connecticut including the techniques used by them to avoid detection by law enforcement officials.

12. The investigation and surveillance referred to in this application was, or may be, carried on by the affiant and the following State's Attorneys, Chief Prosecutor of the Circuit Court and members of the Connecticut State Police Department:

    1. State's Attorney Joseph T. Gormley, Jr.
    2. State's Attorney John F. Bianchi

3. State's Attorney John D. LaBelle
4. State's Attorney Arnold Markle
5. State's Attorney Francis M. McDonald, Jr.
6. State's Attorney Edmund W. O'Brien
7. State's Attorney Donald B. Caldwell
8. State's Attorney Harry S. Gaucher, Jr.
9. State's Attorney Vincent Scamporino
10. Chief Prosecutor Cornelius J. Shea
11. Commissioner Cleveland B. Fuessenich
12. Lt. Orlando P. Ragazzi
13. Sgt. George Potter
14. Sgt. Lester J. Forst
15. Sgt. James Shay
16. Sgt. Leslie Williams
17. Cpl. Timothy Murphy
18. Cpl. Nicholas Valerio
19. Cpl. Robert Root
20. Cpl. James Smith
21. Cpl. Doris Hughes
22. Det. Martin Ohradan
23. Det. James Smith
24. Det. Bruce Haines
25. Trp. John Petrowski
26. Trp. Bernard Deprimo
27. Trp. Frank Dlugokinski
28. Trp. Cataldo Ventura
29. Trp. Curt Peircey
30. Trp. George Ryalls
31. Trp. Brian Esson
32. Trp. Jerry Fucci
33. Trp. Ronald Hart
34. Trp. David Paige
35. Trp. Orlando Moranino
36. Trp. Nicholas Barone
37. Trp. George Huston
38. Trp. Robert Keller

39. Trp. Douglas Hanahan
40. Trp. Michael Conroy
41. Trp. Daniel Gaslicki
42. Trp. David Carey
43. Trp. Robert Welch
44. SPW Irene Welch
45. Trp. Norman Soucie
46. Trp. Thomas Bennett
47. Assistant State's Attorney Walter H. Scanlon

13. That on March 15, 1973, a court ordered wiretap was authorized, Order Number 73-03, to monitor telephone facility 589-9878, a public pay telephone located outside the Austin House Hotel, Main Street, Terryville, Connecticut and telephone facility 589-9920, a public pay telephone located inside the Austin House Hotel, Main Street, Terryville, Connecticut.

14. That in the conversations which have been monitored in this electronic surveillance it is quite apparent that the two telephones are being used to conduct narcotic transactions. The intercepted communications have been reported to me, as supervisor of the State Police in this investigation.

15. That on March 20, 1973, a call was intercepted at 11:38 P.M. during which a male identified as "Frank", called James (Sonny) Black, at telephone facility 748-2479, listed to Miss Sandy McGarrah, 30 Durant Avenue, Bethel, Connecticut. In this conversation, Frank told Sonny that he (Frank) spoke to the "old boy" today (March 20, 1973) and here is what he had to say. "He says the price you (Sonny) owes is 5500, it was 7000. Frank told Sonny that the "Man" is laying on (counting on) the 5500 so he can re-up. Frank told Sonny that the "Man" said "if you (Sonny) can't come up with the bread right away you (Sonny) will have to give him (old boy) three spoons of dope a day until you get it." Frank told Sonny that the "Man" has a three spoon a day habit. Frank

told Sonny that the "Man" said he wants at least 3000 right away. Sonny told Frank that the "dude" (Old Boy) is being unreasonable and that 5500 was a lot of bread. Sonny told Frank that he would get the "dude" some methadone, about 100 dollars worth. Frank told Sonny to get 2 or 3 hundred worth. Frank also told Sonny that the "Man" has some "Super dope" lined up that is better than the last stuff. Frank told Sonny to get that goddam 3000, now he (Old Boy) has to depend on you for the dope.

16. That the affiant knows that a James Black of 6 Durant Street Danbury, Connecticut, is a known seller of heroin, described in paragraph 15.

17. That in a second conversation monitored on March 20, 1973, this male identified as Frank called Canada and in conversation with a female known as Dianne, mentioned that he lived in Burlington.

18. That in a conversation monitored on March 21, 1973. Frank called a Doug Maycheck in Darien. Doug asked Frank for his home phone number and Frank told Doug that he had the phone in the house yanked out as he was sure it was tapped.

19. That on March 22, 1973, Agent Art Fredericks reported to the affiant that Frank has been identified as Frank Paul LePore, Date of birth 2/8/50, by police photograph.

20. That on March 22, 1973 Agent Thomas Hunt reported to the affiant that in attempting to contact Allen LaFleur to purchase heroin, Hunt overheard Kathleen Paradis direct a unknown male to call 747-5361 to reach Allen LaFleur from the telephone 589-9920 in an attempt to contact Allen LaFleur to arrange a sale of heroin to Hunt.

21. That on March 22, 1973, the affiant was advised that telephone number 747-5361 was called six times from 589-9920 but no answer was made to the ringing.

22. That a check of telephone number 747-5361 was made and it was learned that the number is listed to Daniel A. Wrisley
a/k/a Daniel A. Risley
17 Dewey Place, Plainville, Connecticut. This information was learned from the Southern New England Telephone Company.

23. That the affiant on March 22, 1973, learned from Resident Trooper Thomas Kenny of Burlington, Connecticut that telephone number 589-7770, listed to Kathleen Paradis, Johnny Cake Mountain Road, Burlington was up to March 19, 1973 located at a home rented by a Daniel Wrisley. This home is
a/k/a Daniel Risley
nightly visited by a great number of cars and Risley is known by the Connecticut State Police at Bradley Field to visit Arizona twice a week. Wrisley has a record of past narcotics
a/k/a Risley
arrests both in Connecticut and Arizona.

24. That the affiant was also told by Agent Hunt that he is now (as of 3/22/73) negotiating a purchase of brown heroin for over $1,000.00 from Allen LaFleur.

25. That with respect to paragraph 22, a purchase of heroin took place between Agent Kelley and Arnold "Tuffy" Albert in Plainville, outside of a residence type structure on Dewey Place.

26. That electronic surveillance is requested in this case because normal surveillance techniques would probably not lead the investigators to the "old Guy." Although the "Old Guy" is a narcotic addict himself, he is and has been well insulated from the persons who have been the cause of this investigation. The ongoing trafficking in brown heroin, narcotics, controlled drugs and cannabis type drugs is over the telephone facility 747-5361 listed to Daniel A. Wrisley, 17 Dewey
a/k/a Daniel A. Risley
Place, Plainville, Connecticut. In addition an undercover

investigation is presently under way, where undercover agents have purchased a large amount of brown heroin from one, Allen R. LaFleur who is associated with Joseph LaBlond and Arnold "Tuffy" Albert in the brown heroin business but have been unable to locate the source of drugs supplying Allen LaFleur and Arnold Albert, which source has remained in the background of the heroin transactions. Allen LaFleur was accompanied by one Kathleen Paradis when LaFleur sold brown heroin to the undercover agent and the said telephone of said Paradis, (589-7770) as given to the undercover agent at Johnny Cake Mountain Road, Burlington, Connecticut has been disconnected on March 19, 1973.

A Frank P. LePore who on March 21, 1973 was observed in the company of Allen LaFleur, has indicated in an intercepted communication that the telephone was removed for fear of a wire tap. This communication was intercepted over telephone facility 589-9920, the facility which was the subject of the original order 73-03.

27. Because of the continuing nature of an illegal narcotic operation of the type described herein and because of the information outlined in this affidavit regarding the individuals involved, the affiant knows from his experience that an illegal narcotic operation will continue to occur over telephone facility 747-5361 and therefore it is necessary to continue monitoring for a period beyond the interception of the first evidentiary conversation overheard in order to lead us to the "Old Guy" who is the supplier of brown heroin to the subjects mentioned previously in this application.

28. In complying with this wiretap statute, it is hereby requested that Mary Margaret Nolan, a typist employed by the Connecticut State Police Department, be given permission to transcribe the taped conversation obtained from these wiretaps.

29. Per Section 4, item 3 of this Public Act, such communications are not legally privileged as the phone number mentioned

on Page 1 is not leased to, listed in the name of, or commonly used by a licensed physician, an attorney at Law, or a practicing cleryman [*Sic*].

30. Not more than thirty four orders authorizing intercepted have been previously issued by all panels in the calendar year, 1973.

31. That the affiant on March 23, 1973, was advised by Agent Hunt while in conversation with Arnold "Tuffy" Albert on March 22, 1973, during a purchase of $975.00 worth of brown heroin, Albert told Agent Hunt that his suppliers were two partners, one who he knew as "Danny", who is an addict and a man named "Skippy" who is a non-addict. Agent Hunt stated he was also told that these two men go regularly to Arizona for heroin which they bring back to Connecticut in large quantities.

32. That the affiant upon checking the toll slips of 589-7770, the telephone which was located at Johnny Cake Mountain Road, Burlington, Connecticut, and which is the phone that was disconnected on March 19, 1973, for fear of a wiretap, and which is the home rented by Daniel Wrisley on Johnny Cake Mountain Road, Burlington, the tolls reflected collect calls from Tuscon, Arizona.

33. That the affiant, was advised on March 26, 1973, that in a intercepted phone conversation that Frank while speaking with a female known as Diane, stated to Diane that he (Frank) had just taken Danny and Allen to the airport. The purpose Frank told Diane was to get more dope.

Dated at Hartford, Connecticut, this 27th. day of March, 1973.

S/ *Lester Forst*

Sgt. Lester Forst

STATE OF CONNECTICUT HARTFORD

COUNTY OF HARTFORD MARCH 27, 1973

The foregoing instrument was signed, sworn to and acknowledged before me, this 27th. day of March, 1973, by Sgt. Lester Forst.

Notary Public

My Commission Expires Mar. 31, 1978

EXHIBIT "B"

The contents of intercepted communication may be disclosed to the following:

1. State's Attorney Joseph T. Gormley, Jr.
2. State's Attorney John F. Bianchi
3. State's Attorney John D. LaBelle
4. State's Attorney Arnold Markle
5. State's Attorney Francis M. McDonald, Jr.
6. State's Attorney Edmund W. O'Brien
7. State's Attorney Donald B. Caldwell
8. State's Attorney Harry S. Gaucher, Jr.
9. State's Attorney Vincent Scamporino
10. Chief Prosecutor Cornelius J. Shea
11. Commissioner Cleveland B. Fuessenich, Conn. State Police
12. Lieut. Orlando P. Ragazzi, Conn. State Police
13. Sgt. Lester J. Forst, Conn. State Police
14. Trp. John Petrowski, Conn. State Police
15. Trp. Norman A. Soucie, Conn. State Police
16. Assistant State's Attorney Walter H. Scanlon

EXHIBIT "C"

Officers Working Interception J.D.L.

1. Commissioner Cleveland B. Fuessenich
2. Lt. Orlando P. Ragazzi
3. Sgt. George Potter
4. Sgt. Lester J. Forst
5. Sgt. James Shay
6. Sgt. Leslie Williams
7. Cpl. Timothy Murphy

8. Cpl. Nicholas Valerio
9. Cpl. Robert Root
10. Cpl. James Smith
11. Cpl. Doris Hughes
12. Det. Martin Ohradan
13. Det. James Smith
14. Det. Bruce Haines
15. Trp. John Petrowski
16. Trp. Bernard Deprimo
17. Trp. Frank Dlugokinski
18. Trp. Cataldo Ventura
19. Trp. Curt Peircey
20. Trp. George Ryalls
21. Trp. Brian Esson
22. Trp. Jerry Fucci
23. Trp. Ronald Hart
24. Trp. David Paige
25. Trp. Orlando Moranino
26. Trp. Nicholas Barone
27. Trp. George Huston
28. Trp. Robert Keller
29. Trp. Douglas Hanahan
30. Trp. Michael Conroy
31. Trp. Daniel Gaslicki
32. Trp. David Carey
33. Trp. Robert Welch
34. SPW Irene Welch
35. Trp. Norman Soucie
36. Trp. Thomas Bennett

CONFIDENTIAL

(When entries have been made on this form)

PART 1A -
TO BE COMPLETED BY PANEL OF JUDGES

A. Application Number: ~~23~~ 73-5

B. Date on which application was heard: 28 March 1973

C. Action Taken: ☒ Approved
☐ Approved Conditionally
☐ Denied

D. Authorization Number: 73-04

E. Request(s) for amendment of authorization received on: n/a
☐ Approved
☐ Denied

F. Request(s) for extension of authorization received on: n/a
☐ Approved
☐ Denied

Therefore, the panel directs the officers named in the order to intercept the telephone communications of (subscriber): Daniel A Risley residing at (address): 17 Dewey Pl, Plainville, Conn., from 6 pm on ~~from~~ 28 March 19 73 to 6 p.m., 7 April 19 73 inclusive. In furtherance of this interception, the Southern New England Telephone Company is ordered to supply John D LaBelle state's attorney for Hartford County, or his duly authorized

agent forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that Southern New England Telephone Company is according the person whose communications are to be intercepted, namely said subscriber Daniel A Risley who normally uses the telephone number 747-5361.

Anthony J. Armentano

Paul J. Driscoll

John J. Bracken

Signatures of Judges

NOTE: THIS ORDER/AMENDMENT/EXTENSION OF AN AUTHORIZATION TO INTERCEPT SHALL BE EXECUTED AS SOON AS PRACTICABLE, SHALL BE CONDUCTED IN SUCH A WAY AS TO MINIMIZE THE INTERCEPTION OF COMMUNICATIONS NOT OTHERWISE SUBJECT TO INTERCEPTION IN ACCORDANCE WITH THE PROVISIONS OF THIS ACT, AND SHALL TERMINATE UPON ATTAINMENT OF THE AUTHORIZED OBJECTIVE.

83-846

Office-Supreme Court, U.S.
FILED
DEC 9 1983
ALEXANDER L. STEVAS,
CLERK

No. 83

In The

Supreme Court Of The United States

OCTOBER TERM, 1983

STATE OF CONNECTICUT
Petitioner

v.

NEIL J. THOMPSON, JAMES C. BLACK, FRANK P. LEPORE, ROBERT E. PARKER, JR.
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

RESPONDENT'S BRIEF IN OPPOSITION

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Robert E. Parker, Jr.

Of Counsel:
WILLIAM J. TRACY, JR.
Furey, Donovan & Heiman, P.C.

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STATEMENT OF THE CASE

On March 9, 1973, the state's attorneys for the Judicial Districts of Litchfield and of Waterbury applied, pursuant to Connecticut General Statutes, Section 54-41a, et seq., for authority to intercept wire communications of Arnold "Tuffy" Albert and others. On March 15, 1973, a panel of judges of the Superior Court authorized the interception of wire communications of Arnold "Tuffy" Albert over two public telephones. The authorization contained a minimization order.

Using information gained from the interceptions, the state's attorney for the Judicial District of Hartford-New Britain applied for authority to intercept communications of Daniel A. Wrisley a/k/a Daniel A. Risley and

others. The panel of judges authorized the interception of wire communications of Daniel A. Risley. The authorization contained a minimization order.

On May 4, 1973, Robert E. Parker Jr. was charged by the State of Connecticut with the crime of conspiring to distribute, compound, transport with the intent to sell, and dispense a narcotic substance, in violation of Connecticut General Statutes, Section 53a-48. Robert E. Parker, Jr., entered a plea of not guilty and elected to be tried by a jury.

The defendant, Robert E. Parker, filed a Motion to Suppress the contents of intercepted wire communications and evidence obtained therefrom. The motion was granted by the Superior Court on September 6, 1974.

The defendant, Robert E. Parker, then filed a Motion to Dismiss which was granted. Judgment of dismissal was entered by the Superior Court on July 28, 1976.

The State of Connecticut appealed from the judgment to the Supreme Court of the State of Connecticut. The Supreme Court of Connecticut affirmed the judgment. The decision of the Supreme Court of Connecticut is reported in at 191 Conn. 360, 464 A.2d. 799 (1983).

REASONS FOR DENIAL OF CERTIORARI

(1) THE SUPREME COURT LACK JURISDICTION UNDER 28 U.S.C. SECTION 1257(3).

> "Final judgments or decrees rendered by the highest court of a state...may be reviewed...:

> (3) By writ of certiorari, where the validity of a State Statute is drawn in question on the ground of its being repugnant to the Constitution...of the United States, or where title, right, privilege or immunity is specially set up or claimed under the Constitution...of...the United States" 28 U.S.C. Section 1257.

The party seeking review bears the burden of establishing that jurisdiction in this Court exists. Department of Mental Hygiene v. Kirchner, 380 U.S. 194, 197 (1965).

Although the constitutionality of the state wiretap statute was questioned by the defendants in the trial court, the issue was resolved in favor of the State and was not presented to the Connecticut Supreme Court. Therefore, since the Connecticut Supreme Court did not consider or decide the question, it is not available as a basis of jurisdiction in this court.

The decision of the Connecticut Supreme Court does not rest upon the assertion of any "...title, right, privilege or immunity..." claimed under the Constitution of the United States. Rather, the decision of the Connecticut Supreme Court has an adequate and independent basis in substantive and procedural state law precluding jurisdiction in this court. Jankovich v. Indiana Toll Road Comm'n, 379 U.S. 487 (1965). Klinger v. Missouri, 80 U.S. 257 (1872).

The Connecticut Supreme Court fashioned a remedy of suppression, not as a matter of federal constitutional law, but to "ensure to integrity of the wiretap statute and of the functioning of the judiciary with respect to it." State v. Thompson, 191 Conn., 360, 383 (1983) (Petitioner's Appendix A at 23a). One important consideration upon

which the remedy was based was the Connecticut Court's "reluctance to accept as evidence in the courts of this state materials obtained in disregard of a [Connecticut] court order." Id. at 382 (Appendix at 22a). The remedy was fashioned because of the state had "violated the minimization mandate of the [Connecticut] wiretap statute and of orders 73-03 and 73-04 [of the Connecticut Superior Court]." Id. at 372 (Appendix A at 12a). Finally, the Connecticut Supreme Court expressly "recognized that...[the Connecticut] wiretap statute is in many ways more straight then the federal act." citing State v. Grant, 176 Conn. 17, 25, 25n.3 (1978) and the Connecticut Legislative history. Id. at 371. (Appendix A at 11a). In both Grant and Thompson, the Connecticut Supreme Court used federal authority

merely as guidance and not as controlling its determination of the appropriate state suppression standard. State v. Grant, supra at 25, State v. Thompson, supra at 371, 380-384. (Appendix A at 11a, 20a-23a).

The state, in its petition, has questioned only the remedy fashioned by the Connecticut Supreme Court. The Connecticut Supreme Court fashioned the remedy as a matter of state, rather than federal, law.

(2) THE RECORD AND CIRCUMSTANCES OF THE CASE SUPPORT THE REMEDY APPLIED BY THE CONNECTICUT SUPREME COURT.

The remedy of suppression was tailored by the Connecticut Court to meet the circumstances of the case. State v. Thompson, supra at 383-84 (Appendix A at 23a). The court had

determined that the officers executing the wiretap "entirely misconstrued the scope of the order..." and "completely disregarded the minimization requirement contained in that warrant..." issued by the panel of judges. Id.

> "The trial court found that surveillance pursuant to the authorized wiretaps took the form of indiscriminate listening to all communications on the tapped telephones. Consequently, with the exception of a single call involving a doctor, every call made over the tapped telephones, the public telephones under order 73-03 and the private telephone under order 73-04, was over heard and recorded in full. all calls were summarized in written logs maintained by the monitoring officers." Id. at 366-67 (Appendix A at 6a-7a).

Furthermore, the record suggested that a call involving a dentist had been intercepted and recorded in full and that, although one officer indicated that he had shut off the recording device on a call involving a doctor and

two involving attorneys, his log revealed only one shut-down. Finally, the Connecticut Supreme Court indicate that the "trial court was not bound to credit the state's conclusory claim that only a small percentage of innocent calls exceeded two minutes in length". Id. at 374 (Appendix A at 14a).

> "Because of the conjunction of these factors, the remedy of total suppression...was entirely appropriate." Id at 384 (Appendix A at 23a).

CONCLUSION

For the foregoing reasons, this Court should find that it lacks jurisdiction to consider the case and that no question worthy of full review is presented and should not issue a writ of certiorari to the Supreme Court of Connecticut.

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